

INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

REPORT

Honourable John W. Morden

June 2012



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June 29, 2012

Dr. Alok Mukherjee
Chair
Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

Dear Dr. Mukherjee:

Having been appointed by the Toronto Police Services Board to conduct the Review described in the Board's Terms of Reference, dated the 23rd day of September, 2010, I submit to the Board the Review's Report.

Yours truly,

Hon. John W. Morden
Reviewer

Hon. Honcaarabdi John W. Morden
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TABLE OF CONTENTS

ACKNOWLEDGMENTS	1
EXECUTIVE SUMMARY AND RECOMMENDATIONS	3
NATURE AND SCOPE OF THE REVIEW	37
PROCESS FOR THE REVIEW.....	39
A. INTRODUCTION	39
B. PROCEDURAL AND INITIAL MATTERS	40
i. Creation of the Review’s Procedural Guidelines	40
ii. Analysis of the Terms of Reference.....	40
C. RESEARCH	40
D. MEETINGS WITH OTHER G20-RELATED INVESTIGATIONS	41
E. PUBLIC CONSULTATION HEARINGS	41
F. DOCUMENT IDENTIFICATION, REQUEST AND PRODUCTION PROCESS.....	42
i. Board and Toronto Police Service Documents	42
ii. RCMP documents	43
iii. Joint documents	43
G. INTERVIEWS	44
H. CONSULTATIONS WITH EXPERTS.....	45
I. PUBLIC COMMUNICATION AND INFORMATION	45
CHAPTER ONE: THE LEGISLATION THAT GOVERNS THE TORONTO POLICE SERVICES BOARD AND THE TORONTO POLICE SERVICE.....	47
A. INTRODUCTION	47
B. THE HISTORY OF LEGISLATION IN ONTARIO ON POLICING IN MUNICIPALITIES	47
C. THE CURRENT <i>POLICE SERVICES ACT</i>	49
i. The responsibilities of boards of police services and of chiefs of police	49
a. The board’s composition	49
b. The legislation	50
c. Policy and operations.....	54
d. The independence of the police force	56
e. The consultation process – information exchange	58
f. Two helpful decisions.....	60
ii. The Adequacy and Effectiveness Regulation – O. Reg. 3/99	63
D. BOARD POLICIES MADE UNDER O. REG. 3/99 AND RELATED MINISTER’S GUIDELINE POLICIES	67

- i. Introduction..... 67
 - ii. Six board policies..... 68
 - iii. Concluding comments 75
- E. BY-LAWS MADE BY THE BOARD UNDER THE *POLICE SERVICES ACT* FOR THE EFFECTIVE MANAGEMENT OF THE POLICE FORCE 76
- F. THE BOARD: TRAINING OF MEMBERS AND LEGAL ADVICE 78
 - i. Training of members..... 78
 - ii. Legal advice..... 79

CHAPTER TWO: CIVILIAN OVERSIGHT IN POLICING..... 81

- A. INTRODUCTION 81
- B. THE FUNDAMENTAL ROLE OF CIVILIAN OVERSIGHT..... 81
 - i. Effective policing requires public confidence..... 81
 - ii. The value of civilian oversight in policing 82
 - iii. The components of civilian oversight in policing 82
 - iv. The territory on which the consultative process occurs 84
- C. THE NEED FOR A CONSULTATION PROTOCOL..... 84
 - i. First element: information exchange between the Board and the chief of police 85
 - ii. Second element: identifying the “critical points” 89
 - iii. Third element: the Board should always be able to collaborate in defining the “what” – but not the “how” – of an operation..... 92
- D. THE CONSULTATION PROTOCOL IN PRACTICE 95
 - i. Accountability after the event..... 96
 - ii. Governance in advance of the event 98
- E. CONCLUSION..... 99

CHAPTER THREE: THE PLANNING AND POLICING FRAMEWORK FOR THE G20 SUMMIT 101

- INTRODUCTION 101
- PART I THE TORONTO POLICE SERVICE’S PLANNING FOR THE G20 SUMMIT 102
 - A. TWO INTERNATIONAL SUMMITS..... 102
 - i. The G8 Summit..... 102
 - ii. A second summit 103
 - iii. No consultation in decision-making 103
 - B. THE SELECTION BY THE FEDERAL GOVERNMENT OF THE LOCATION AND VENUE FOR THE G20 SUMMIT..... 104
 - i. The Summit Management Office..... 104
 - ii. Initial information provided to the Toronto Police Service 104
 - iii. The federal government’s official announcement about the G20 Summit’s location 105
 - iv. The federal government’s official announcement about the G20 Summit’s venue 106

C. THE TIMING OF THE FEDERAL GOVERNMENT'S SELECTIONS AND ANNOUNCEMENTS REGARDING THE G20 SUMMIT AFFECTED THE TORONTO POLICE SERVICE'S PLANNING FOR THE EVENT.....	109
i. Official announcement required for planning purposes	109
ii. Funding challenges respecting the Toronto Police Service's involvement	109
iii. Challenges regarding acquisition of equipment and facility arrangements.....	113
iv. Challenges regarding the development of policing plans for the event	114
a. Dependency on another source for necessary planning information.....	114
b. Short timeline for Toronto Police Service to develop the policing plans	115
c. Short timeline prevented full involvement of operational decision-makers in planning and necessary testing of plans	117
D. COMMUNICATION OF PLANNING CHALLENGES TO THE BOARD	119
PART II THE TORONTO POLICE SERVICE'S ROLE IN DEVELOPING THE POLICING FRAMEWORK FOR THE G20 SUMMIT.....	122
A. DETERMINATION OF PRIORITIES AND OBJECTIVES FOR THE POLICING OF THE G20 SUMMIT.....	122
i. A legal framework: the <i>Foreign Missions and International Organizations Act</i>	122
ii. Toronto Police Service's policing responsibilities for the G20 Summit.....	126
iii. Priorities and objectives for G20 Summit security	127
B. DEVELOPING THE FRAMEWORK AND PLANS FOR G20 SUMMIT SECURITY	130
i. The Integrated Security Unit's structure and mandate	130
ii. Integrated Security Unit Groups	132
iii. Areas of planning responsibility	133
iv. Integrated planning process	134
v. No knowledge by the Board of the planning process.....	135
C. THE TORONTO POLICE SERVICE'S PLANNING FOR THE G20 SUMMIT	137
i. Planning Team	137
ii. Toronto Police Service's mission statement	138
iii. Toronto Police Service's "Concept of Operations"	139
iv. Toronto Police Service's Operational Plan for the G20 Summit	140
v. No consultation with the Board on the Toronto Police Service's objectives and priorities for the G20 Summit	143
D. CONCLUSION.....	144
CHAPTER FOUR: TORONTO POLICE SERVICE OBJECTIVES AND PRIORITIES FOR THE G20 SUMMIT	147
A. SETTING THE TORONTO POLICE SERVICE'S OBJECTIVES AND PRIORITIES.....	147
B. NO INVOLVEMENT BY THE BOARD IN SETTING PRIORITIES AND OBJECTIVES.....	148
C. THE EMPHASIS ON PROTECTING THE INTERDICTION ZONE FENCE.....	149
i. Prioritizing the Interdiction Zone fence	149
ii. Toronto Police Service resource deployment.....	150
iii. The breakdown in policing the Outer Zone	151

iv. The redeployment of resources to the Outer Zone.....	152
v. “Own the streets”.....	153
D. THE BOARD’S ROLE IN SETTING OBJECTIVES AND PRIORITIES.....	154
CHAPTER FIVE: COMMAND AND CONTROL	155
A. THE G20 SUMMIT COMMAND AND CONTROL STRUCTURE	155
i. Responsibilities of the Toronto Police Service and the Royal Canadian Mounted Police in the command and control structure	155
ii. The Steering Committee, command centres, and sites.....	156
a. Steering Committee	157
b. Unified Command Centre	157
c. Area Command Centres.....	157
d. Major Incident Command Centre	158
e. Site commanders.....	158
iii. Decision-making matrix.....	159
B. DEVELOPING THE COMMAND AND CONTROL STRUCTURE.....	160
C. TWO GAPS IN THE COMMAND AND CONTROL STRUCTURE	160
i. No direct command link between the MICC and RCMP and OPP resources.....	161
ii. No transfer of command process	164
D. BOARD ROLE IN SETTING COMMAND AND CONTROL STRUCTURE.....	166
CHAPTER SIX: TORONTO POLICE SERVICES BOARD’S KNOWLEDGE OF G20 SUMMIT MATTERS.....	167
INTRODUCTION	167
PART I GENERAL INFORMATION SHARING PRACTICES.....	169
A. FORMAL COMMUNICATIONS BETWEEN THE CHIEF AND THE BOARD	169
i. Board meetings	169
ii. Setting the agenda for Board meetings	170
iii. Pre-meeting agenda briefings.....	172
iv. Adequacy of information transmitted at Board meetings	173
B. INFORMAL COMMUNICATIONS BETWEEN THE CHIEF AND THE BOARD	175
C. INFORMAL COMMUNICATIONS AMONG BOARD MEMBERS	178
D. AN ALTERNATIVE SOURCE OF INFORMATION: THE ROLE OF BOARD STAFF	178
E. INFORMATION SHARING PRACTICES REGARDING OPERATIONAL MATTERS.....	179
PART II INFORMATION EXCHANGE BETWEEN THE TORONTO POLICE SERVICE AND THE BOARD IN THE LEAD UP TO THE G20 SUMMIT	181
A. OVERVIEW OF THE BRIEFINGS AND INFORMATION PROVIDED TO THE BOARD CONCERNING POLICING FOR THE G20 SUMMIT.....	181
i. Board Meeting of December 17, 2009 – Closed and Open Meeting	182
ii. Board Meeting of January 21, 2010 – Closed Meeting.....	183
iii. Board Meeting of February 18, 2010 – Closed Meeting.....	184

iv.	Board Meeting of March 8, 2010 – Special Open Meeting	185
v.	Board Meeting of March 25, 2010 - Closed Meeting	186
vi.	Board Meeting of March 25, 2010 – Open Meeting	186
vii.	Board Meeting of April 22, 2010 – Closed Meeting.....	187
viii.	Board Meeting of April 22, 2010 – Open Meeting	187
ix.	Board Meeting of May 13, 2010 – Special Closed Meeting	188
x.	Board Meeting of May 20, 2010 – Closed Meeting.....	188
xi.	Board Meeting of May 20, 2010 – Open Meeting	189
xii.	Board Meeting of June 4, 2010 – Special Closed Meeting	190
xiii.	Board Meeting of June 11, 2010 – Special Closed Meeting	191
xiv.	Board Meeting of June 11, 2010 – Special Open Meeting	192
	a. The LRAD	192
	b. Application of the Board’s policies and the Toronto Police Service’s procedures	193
	c. Continuity of policing services	193
	d. Community concerns regarding the deployment of tear gas	193
xv.	Board Meeting of June 29, 2010 – Closed Meeting.....	194
B.	CHALLENGES FACED BY THE BOARD CONCERNING THE FLOW OF INFORMATION ON G20 SUMMIT POLICING ISSUES	194
C.	THE BOARD’S RESPONSE TO THESE CHALLENGES.....	196
D.	INFORMATION KNOWN BY THE BOARD REGARDING THE FRAMEWORK AND PLAN FOR POLICING THE G20 SUMMIT.....	198
i.	G20 Summit budget	198
	a. Information provided to the Board.....	198
	b. Questions asked or information requested by the Board.....	199
	c. Adequacy of the information provided or requested.....	200
ii.	The role of the ISU and the ISU Partners	202
	a. Information provided to the Board.....	202
	b. Questions asked or information requested by the Board.....	203
	c. Adequacy of the information provided or requested.....	204
iii.	Toronto Police Services Operational Plan and Mission Statement	205
	a. Information provided to the Board.....	205
	b. Questions asked or information requested by the Board.....	207
	c. Adequacy of the information provided or requested.....	207
iv.	The Command and Control Structure for the G20 Summit	209
	a. Information provided to the Board.....	209
	b. Questions asked or information requested by the Board.....	210
	c. Adequacy of the information provided or requested.....	211
v.	The Legal Framework for Policing the G20	211
	a. Information provided to the Board.....	211
	b. Questions asked or information requested by the Board.....	214
	c. Adequacy of the information provided or requested.....	215
vi.	The Secondment of Other Police Services.....	216
	a. Information provided to the Board.....	216
	b. Questions asked or information requested by the Board.....	217
	c. Adequacy of the information provided or requested.....	218

vii. Training.....	222
a. Information provided to the Board.....	222
b. Questions asked or information requested by the Board.....	223
c. Adequacy of the information provided or requested.....	223
viii. Human Resources	225
a. Information provided to the Board.....	225
b. Questions asked or information requested by the Board.....	226
c. Adequacy of the information provided or requested.....	226
ix. Infrastructure and Equipment.....	227
a. Information provided to the Board.....	227
b. Procurement of Equipment for the G20 Summit	228
c. Questions asked or information requested by the Board.....	229
d. Adequacy of the information provided or requested.....	232
PART III ISSUES OR PROBLEMS FACED BY BOARD MEMBERS HAVING REGARD TO THEIR MULTIPLE ROLES AND RESPONSIBILITIES	233
A. THE BOARD’S STRUGGLE TO BALANCE ITS DUAL ROLES – BOARD MEMBER VERSUS CITY COUNCILLOR.....	233
B. THE COMPLAINT AGAINST COUNCILLOR VAUGHAN AND THE SHARING OF “CLASSIFIED” INFORMATION	234
C. THE IMPLICATIONS OF THE COMPLAINT FILED AGAINST COUNCILLOR VAUGHAN	236
D. THE REVIEW’S FINDINGS ON THE COUNCILLOR VAUGHAN COMPLAINT.....	237
E. RESOLVING THE CHALLENGES THAT COME WITH PLAYING DUAL ROLES.....	238
F. CONCLUSION.....	240
i. Concerns with the Board’s general information sharing practices.....	240
ii. The information the Board received in the lead-up to the G20 Summit was inadequate	241
CHAPTER SEVEN: TRAINING OF POLICE FOR THE G20 SUMMIT.....	245
A. INTRODUCTION	245
B. THE STRUCTURE OF TRAINING	246
i. Online or E-Learning Training	247
ii. Face-to-Face Training.....	248
iii. An overview of who participated in the training sessions.....	249
a. Online or e-learning training.....	249
b. Face-to-face training	250
C. THE DEVELOPMENT OF THE TRAINING CURRICULUM.....	251
i. Design and approval of the training curriculum.....	251
ii. The issue of timing in the development of the training curriculum	252
D. THE CONTENT OF THE TRAINING	254
i. Training Module A	254
a. Crowd Management Training.....	255
b. The LRAD	256
ii. Training Module B.....	256

a. Public order incidents and breach of the peace	257
b. Investigative detention	259
c. Search incident to arrest	260
d. Arrest process	261
e. Gate management	261
iii. Ontario provincial statutes training	262
iv. Non-POU face-to-face training	263
v. POU face-to-face training	265
E. STYLE AND TONE	266
F. THE BOARD'S ROLE IN THE DEVELOPMENT OF THE TORONTO POLICE SERVICE'S TRAINING PLAN	267
G. CONCLUSION	268

CHAPTER EIGHT: POLICIES AND PROCEDURES CONCERNING CROWD CONTROL AND MASS DEMONSTRATIONS 271

A. INTRODUCTION	271
B. CROWD CONTROL AT MASS DEMONSTRATIONS	271
i. Toronto Police Services Board policies	271
ii. Toronto Police Service procedures	271
C. MONITORING COMPLIANCE WITH POLICE SERVICE PROCEDURES ON CROWD CONTROL	274

CHAPTER NINE: TORONTO POLICE SERVICES BOARD POLICIES AND TORONTO POLICE SERVICE PROCEDURES ON THE WEARING OF POLICE NAME BADGES 277

A. INTRODUCTION	277
B. THE WEARING OF NAME BADGES	277
i. Board policy on name badges	277
C. POLICIES AND PROCEDURES ON THE WEARING OF POLICE NAME BADGES	278
D. MONITORING POLICE SERVICE PROCEDURES ON WEARING NAME BADGES	280
E. DID TORONTO POLICE SERVICE OFFICERS REMOVE OR COVER THEIR NAME BADGES DURING THE POLICING OF THE G20 SUMMIT?	281

CHAPTER TEN: THE *PUBLIC WORKS PROTECTION ACT* AND ONTARIO REGULATION 233/10 283

A. INTRODUCTION	283
B. THE LEGAL BASIS FOR THE SECURITY PERIMETER	284
i. <i>The Foreign Missions and International Organizations Act</i>	285
ii. <i>The Public Works Protection Act</i>	288
C. THE TORONTO POLICE SERVICE'S REQUEST FOR A REGULATION UNDER THE <i>PWPA</i>	288
i. A request by the Chief and not the Board	288

ii.	Overview of the <i>PWPA</i>	290
a.	Definition of a “public work”	290
b.	Powers of guards and peace officers	290
c.	Additional powers	291
iii.	The request	291
iv.	O. Reg. 233/10	293
D.	THE BOARD’S LACK OF INVOLVEMENT IN MAKING THE REQUEST FOR O. REG. 233/10	296
i.	Information provided to the Board	296
ii.	Timing of the provision of information to the Board	300
E.	LEGAL ADVICE RECEIVED BY THE BOARD	301
F.	THE APPROPRIATE ROLE FOR THE BOARD IN SEEKING LEGISLATIVE CHANGE	301
G.	COMMUNICATION OF AN INCORRECT INTERPRETATION OF O. REG. 233/10	304
i.	Lead up to the G20 Summit	304
ii.	The incorrect interpretation	305
iii.	Toronto Police Service’s communication of the incorrect interpretation of O. Reg. 233/10	307
H.	CORRECTING THE MISINTERPRETATION OF O. REG. 233/10	308
i.	Steps taken by the Toronto Police Service	308
ii.	Steps taken by the Board	309
	CHAPTER ELEVEN: THE PRISONER PROCESSING CENTRE	311
A.	INTRODUCTION	311
B.	DESIGNING THE PPC	312
i.	The short planning period	312
ii.	The planning process	313
iii.	Relevant legislation – Temporary detention facilities	314
a.	Three types of temporary detention facilities	314
b.	The Board’s responsibility for ensuring adequate facilities	315
iv.	Relevant legislation – Prisoner care and management	316
C.	THE PPC OPERATIONAL PLAN	317
i.	Plan objective	317
ii.	Design of the PPC	318
a.	Capacity	319
b.	The prisoner booking process	320
c.	Prisoner information tracking systems	322
d.	Back-up plan	323
iii.	Shortfalls in the PPC Plan	323
a.	Reliance on existing processes and procedures	323
b.	No adaptation of standard processes and procedures	324
D.	THE BOARD’S INVOLVEMENT	326
i.	Information provided by the Toronto Police Service to the Board	327

a.	January 21, 2010 Board Meeting	327
b.	Informal briefings	328
c.	PPC planning materials.....	328
d.	Tour of the PPC	329
e.	Meaningful information exchange	329
ii.	Steps taken by the Board.....	330
a.	No review of existing Board policies.....	331
b.	No review of existing procedures and the PPC Plan.....	333
E.	THE PPC IN OPERATION.....	334
i.	Command of the PPC.....	335
ii.	Transition from planning to operational phases	336
iii.	Changes to the PPC Plan.....	337
a.	Pre-Booking Officer	337
b.	Additional Tracking System	338
c.	Division of PPC into Four Zones.....	339
iv.	Delays in prisoner booking	340
v.	Large influxes of prisoners	340
vi.	Implementation of back-up plan	341
F.	THE IMPACT ON PRISONERS	341
i.	Delay.....	342
ii.	Detention in restraints.....	342
iii.	Release of prisoners without charge	344
iv.	Access to counsel.....	345
a.	Duty counsel.....	346
b.	Private lawyers.....	346
c.	Restrictions on access to counsel.....	347
v.	Medical care.....	349
vi.	Provision of food and water	350
vii.	Strip searches	351
viii.	Young people.....	353
ix.	Access to toilet facilities	355
x.	Personal property	356
xi.	Persons with disabilities.....	357
G.	CONCLUSION.....	357

APPENDICES

APPENDIX A: TERMS OF REFERENCE	359
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APPENDIX B: PROCEDURAL GUIDELINES.....	367
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APPENDIX C: MEDIA RELEASES RELATING TO THE PUBLIC CONSULTATIONS.....	373
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APPENDIX D: PUBLIC CONSULTATION SUBMISSION FORM	379
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APPENDIX E: REQUEST FOR INFORMATION TO THE TORONTO POLICE SERVICES BOARD, DATED 29 SEPTEMBER 2010.....385

APPENDIX F: REQUEST FOR INFORMATION TO THE TORONTO POLICE SERVICE, DATED 30 SEPTEMBER 2010389

APPENDIX G: REQUEST FOR INFORMATION TO THE RCMP, DATED 2 DECEMBER 2010393

APPENDIX H: MEDIA RELEASES397

APPENDIX I: HIGH-LEVEL RESPONSIBILITY ASSIGNMENT MATRIX (ROYAL CANADIAN MOUNTED POLICE, *INTEGRATED PROJECT PLAN* (9 JUNE 2010))403

APPENDIX J: *PUBLIC WORKS PROTECTION ACT*, R.S.O. 1990, C. P.55.....407

ACKNOWLEDGMENTS

The production of this Report has been a team effort throughout. The team comprises Ryan Teschner, the Review's Counsel, and Kelly Henriques and Mark Hines, Associate Counsel – all colleagues of mine at Heenan Blaikie LLP.

Ryan Teschner assumed many heavy burdens that included organizing the various kinds of work that was required to be done to carry out the Terms of Reference, representing the Review in all communications with various segments of the public on a whole range of matters relating to the Review, preparing in detail the Review's interviews with the Board Members, the Board staff, and Chief of Police Blair, and in taking the lead in the questioning during the interviews. In addition he drafted and aided in the re-drafting of many parts of the Report.

Kelly Henriques and Mark Hines engaged heavily in basic legal research in the early stages of the Report, drafted and re-drafted parts of the Report, and engaged constructively in team discussions of issues, large and small, that required some form of resolution.

In addition, the Review has received substantial assistance from a large number of members of the Heenan Blaikie staff: assistants, law clerks, students, and technicians, all of it directed to one facet or another of the preparation of the Report.

All of the assistance that I have received has been marked with dedication and distinction and I express my profound gratitude for it.

I am also grateful for the time and attention members of the public gave at the Review's Public Hearings.

I confirm that the conclusions and recommendations in this Report are mine.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

CHAPTER ONE: THE LEGISLATION THAT GOVERNS THE TORONTO POLICE SERVICES BOARD AND THE TORONTO POLICE SERVICE

Public police services are governed by law. In the case of the Toronto Police Services Board (“the Board”) and the Toronto Police Service, the main legislative authority is the *Police Services Act*, R.S.O. 1990 c. P.15. The Board’s basic mandate is expressed in the opening words of s. 31(1) as follows:

A board is responsible for the provision of adequate and effective police services in the municipality [the City of Toronto]...

These opening words of s. 31 (1) state the basic purpose of the Board and, necessarily, frequent references will be made to them in this Report. They provide the answer to many questions on whether a particular action or a response by the Board is warranted and appropriate. Indeed, they are the authority on which the Board relies in establishing this Review.

The first general statute for what is now the Province of Ontario that was concerned with delivery of police services by cities was the *Municipal Institutions Act of Upper Canada* 1858. This legislation was amended in many particular respects between 1858 and the present. In 1946, the provisions in it were removed from the *Municipal Act* to the newly enacted *Police Act*.

Section 1 (2) of the *Police Services Act* provides:

Police services shall be provided throughout Ontario in accordance with the following principles:

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

The purpose of this provision is not to provide for the application of the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code* because, from their own force, their terms apply directly to every case in which the facts makes them applicable. The purpose of the provision is, rather, to remind those acting under the *Police Services Act* of the constant bearing of the *Charter* and the *Human Rights Code* on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention, and search

and seizure, engage rights that are protected by the *Charter* or the *Human Rights Code*. These fundamental rights are highly valued in our society and must be protected from infringement by improper police action.

The main features of the *Police Services Act* are, as far as this Review is concerned, the changes made in the responsibilities and processes of police services boards. When the bill that became the *Police Services Act* was before the Legislative Assembly in 1989 and 1990, three features were stressed by the Solicitor General. The *Police Services Act* was intended: (1) to provide boards, police officers and chiefs of police with a “clear direction and a more precise definition of their roles and responsibilities”; (2) “to strengthen the role of the police services board”; and (3) it was to bring about “an enhanced level of interaction between the police and the community and to make our police services more reflective of the community they serve.”

Before 1990, the statute did not provide clear direction or definition of the roles and responsibilities of boards and chiefs of police. There was a general understanding that matters of “policy” were for the board and matters of “operations” were for the chief of police and that the two must always be kept separate. As will be shown in parts of this Report, this general understanding has been carried forward after 1990 although there is no statutory foundation for it. In fact, it is clearly inconsistent with the provisions of the *Police Services Act* – in particular, sections 31 (1)(b), 31 (1)(c), and 41 (1)(a). Sections 31 (1)(b) and 31(1)(c) provide, respectively, that a board “shall generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality” and shall “establish policies for the effective management of the police force.” Section 41 (1)(a) provides that the duties of a chief of police include “administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the Board under subsection 31 (1).”

Accordingly, the duties of the chief of police under section 41 (1)(a) dovetail with the board’s responsibilities under section 31 (1)(b) and (c). The chief of police has the duty to administer the police force and oversee its operation “in accordance with the objectives, priorities and policies established by the board under subsection 31(1).” It is important to note that under section 31 (1)(b) there is to be a “consultation” between the board and the chief of police before the board determines the objectives and priorities with respect to police services in the municipality.

The matter of operations is addressed in the *Police Services Act*. Section 31 (4) provides:

The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

This provision is the only one in the *Police Services Act* that imposes a limit on a board’s governance powers. It gives effect to the important principle of the independence of members of the police force in carrying out their law enforcement responsibilities. It is not infringed by the carrying out of the duties provided for in sections 31 (1)(b) and (c) and 41 (1)(a).

These statutory provisions are a clear reflection of the purposes of the *Police Services Act*, stated by the Solicitor General when it was before the legislature in bill form and also are fully consistent

with sound principles of civilian oversight. It is important to note that neither of the prohibitions in section 31 (4) prevent a board from obtaining any information, including operational information, from the chief of police nor from discussing any matter relating to policing in the municipality with the chief of police. These prohibitions also do not prohibit a board from expressing its opinions, or making suggestions, to the chief of police on any aspect of policing in the municipality.

As far as the meaning and scope of what a “policy” is, it is clear that it cannot breach section 31 (4). The review agrees with the general statement in the Ontario Association of Police Service Board’s Handbook:

Section 31 (4) of the Act is intended to prevent direct Board interference in the actual policing function but not to prevent the Board from making decisions governing the structure and environment in which those policing functions occur.

Chief of Police William Blair in his interview with the Review said that he agreed with this general statement.

Chapter One sets out the complete text of six Toronto Police Services Board policies as examples of what, in fact, has been done under the Board’s policy-making responsibilities. It may be noted that each one of them has some relevance to policing functions at the G20 Summit. A feature of some of these policies is that they do not state any policy. They merely provide what Ontario Regulation 3/99, made under the *Police Services Act*, requires – that the chief of police establish procedures and processes with respect to the subject in question. In other words, they provide no policy guidance to the police service, which was the clear intention of the statute.

It is not the standard practice for the procedures and processes made by the Toronto Police Service to be filed with the Board, whether made in relation to a matter covered by a Board policy or otherwise. Accordingly, having made a policy the Board does not see its consequences. The result is clearly inconsistent with the monitoring and oversight responsibilities of the Board.

Under the present arrangement for the provision of legal services to the Board, the Board is advised by a lawyer who is on the staff of the legal department of the City of Toronto and who also provides legal services to the Toronto Police Service. The Board’s legal advisor should not be encumbered by the possibility of being in a position of conflict of interest.

Recommendation No. 1: Improving the nature and quality of Board policies

The Board, the Chief of Police, and the Ministry of Community Safety and Correctional Services should engage in consultation with a view to devising a method of improving the general nature and quality of Board policies made under O. Reg. 3/99 and otherwise.

Recommendation No. 2: Filing police service procedures and processes with the Board

All Toronto Police Service procedures and processes should be filed with the Board as a necessary step to strengthen the exercise of its monitoring and oversight responsibilities.

Recommendation No. 3: Legal counsel to the Board

The Board should have its own counsel whose legal services are not available to either the Toronto Police Service or the City of Toronto.

CHAPTER TWO: CIVILIAN OVERSIGHT IN POLICING

Civilian oversight of our police is essential. It acts as a check and balance against the legal powers society has given the police to enforce the law. Effective oversight of the police is the way that the public and police remain partners in the preservation of public safety. For the police to be effective in our communities, the public must have respect for those that perform the policing function. The governance and accountability that civilian oversight creates work in tandem.

The Ontario Legislature has adopted a system where, for municipal police services, a board comprised of persons unconnected with the police consult with the chief of police to identify objectives and priorities for the police service. The board also creates the policy framework in which those objectives and priorities will be achieved. The responsibility of police boards is considerable. Through their policy-making and resource allocation powers, police boards shape the way in which policing is done. Therefore, effective fulfillment of the governance role that police boards play ensures that decisions made and actions taken by police are reflective of the community's values.

In establishing objectives and priorities for the police service, a police board must be mindful of only one, albeit one very specific prohibition: not to direct the chief of police with respect to *specific* operational decisions or with respect to the day-to-day operation of the police service. Unfortunately, despite the clear wording of the *Police Services Act*, the Board has defined its responsibilities in terms of a separation between matters of policy and operational matters. The Board has limited its consultative mandate and has viewed it as improper to ask questions about, comment on, or make recommendations concerning operational matters. The Board's approach in this regard has been wrong.

Consultation between a police board and the chief of police is the main process through which the police board can engage in an assessment of the adequacy and effectiveness of the policing services which have been or will be provided. The overall purpose of a consultation between a police board and the chief of police is to identify the elements that are required for the police service to deliver adequate and effective policing within the municipality. Sometimes, this consultation will take place *before* a particular police operation or event. The police board can use

the information to provide further guidance to the police service by creating policies that will frame the operation or event and assist in the achievement of identified outcomes. This consultation can also take place *after* a particular police operation or event and will take the form of deconstructing what happened and why, which can identify valuable lessons and lead to accountability for the decisions that were made.

I have designed a consultation protocol and recommend that the Board use this protocol in its interactions with the chief of police. This consultation protocol will help to ensure that the Board obtain relevant information that will assist it in identifying the objectives and priorities for the Toronto Police Service to achieve. There are three elements to the consultation protocol that I propose:

First element – Information exchange between the Board and Chief of Police: a reciprocal information exchange between the Board and Chief of Police must exist to ensure that each obtain information relevant to their respective roles. With this exchange, the Board will be provided with operational information that will inform its policy-making function and the Chief of Police will have an opportunity to provide his or her views on policy options the Board is considering. With this exchange, both policies and operations may be adjusted to address changing circumstances. Where sensitive law enforcement matters are concerned, the Board should resort to the appropriate statutory measures to maintain confidentiality of information where appropriate.

Second element – Identifying the “critical points”: The Board should seek specific operational information from the Chief of Police where a “critical point” arises. These are policing operations (e.g. gun and gang operation), events (e.g. international summit of world leaders), or organizationally-significant issues (e.g. the use of Conducted-Energy Weapons, or TASERS, by the police) for which advance approval at the Toronto Police Service’s highest levels of command is required.

Third element – Board collaboration in defining the ‘what,’ but not the ‘how,’ of an operation: The Board should use the operational information it obtains from the Chief of Police to determine what the Toronto Police Service’s overall objectives and priorities will be for a particular operation, event, or organizationally-significant issue. With these established, the Toronto Police Service can create specific operational plans that will outline how the policing mission and objectives will be achieved. The Toronto Police Service must always maintain its autonomy to make and execute particular decisions during the operation. The Board should review the Toronto Police Service’s operational plans to ensure they are consistent with the mission or objectives stated by the Board and that they have the benefit of an adequate policy framework.

Proper application of this consultation protocol will ensure that policy vacuums do not develop that could compromise the attainment of the Board’s objectives and priorities. It will also permit

the Board to provide recommendations, but not direction, to the Toronto Police Service where it believes that a particular aspect of an operational plan is inconsistent with applicable legal requirements or community norms and values.

The consultation protocol that I recommend, while in harmony with the framework and provisions of the *Police Services Act*, is not consistent with the way in which the Board has generally applied its oversight role to date. To be successful, the application of this consultation protocol will require a mutual commitment on the part of the Board and the Toronto Police Service to engage with one another as true partners in the delivery of policing services in Toronto.

Recommendation No. 4: Information exchange between the Board and the Chief of Police on all subject matters

The Board and the Toronto Police Service should ensure that an open exchange of information on all matters of operations and policy is established and maintained. The purpose of this information exchange is to ensure that both the Board and the Toronto Police Service are aware of the details necessary to engage in consultation concerning Board policies and Toronto Police Service operational mandates.

This exchange must permit a two-way transmission of information between the Board and the Toronto Police Service: the Board is to be made aware of all information relevant to its statutory role to determine “objectives, priorities and policies” for policing in Toronto and the Toronto Police Service is to be made aware of information that may assist it in commenting on policy options the Board is considering. In particular, this information exchange must include the provision to the Board of relevant operational information by the Toronto Police Service before operations actually unfold.

Recommendation No. 5: The Board should create a policy that defines “critical points”

The Board should, in consultation with the Toronto Police Service, draft a policy that defines what will constitute a “critical point” in municipal policing and identifies criteria that will be applied in determining when a “critical point” has arisen. This policy will assist both the Board and the Chief of Police in determining when operational information should be provided to the Board in advance of the “critical point.”

The Board should consider using the following definition of a “critical point”: a policing operation, event, or organizationally-significant issue for which advance planning and approval at the Toronto Police Service’s command level is required.

There should be clarity and consistency concerning the types of matters about which more detailed information, including operational information, should be provided to the Board by the Toronto Police Service. This policy should be reviewed by the Board with some frequency after it is established to ensure that it is enabling the Board to identify events and issues for which operational information should be provided in advance.

Recommendation No. 6:

The Board should determine appropriate objectives, priorities, and policies for major events, operations, and organizationally-significant issues in which the Toronto Police Service will be involved

Where critical points in the policing of Toronto arise, the Board and Toronto Police Service should apply the consultation protocol and engage in a consultation about the major event/operation or organizationally-significant issue at the earliest possible opportunity. The Board should be provided with relevant operational and other information in order to understand the details of the major event/operation/issue. The Board should then work with the Chief of Police to identify the mission, objectives and priorities for the particular event/operation/issue, the achievement of which will result in the provision of adequate and effective policing in Toronto.

Once the mission, objectives and priorities have been defined, the Toronto Police Service must maintain the autonomy to develop and execute the appropriate operational plans. The Board should conduct a review of the Toronto Police Service' operational plans to ensure that (a) they are consistent with the mission or objectives stated by the Board, (b) they are consistent with applicable Board policies, and (c) that no additional policies are required in order to provide guidance to the Toronto Police Service. Through this review process, the Board may provide recommendations to the Toronto Police Service where it believes that a particular aspect of the operational plan may result in the operational mission, objectives and priorities not being achieved. The Chief of Police, however, must remain entirely free to accept or reject the Board's recommendations.

CHAPTER THREE: PLANNING AND POLICING FRAMEWORK FOR THE G20 SUMMIT

The Toronto Police Service was forced to plan for a major policing event in far less time than would usually be available for a security operation the scope of the G20 Summit. The G20 Summit was the largest security operation in Canada's history. In Chief William Blair's view, the planning required of the Toronto Police Service was "extraordinary." The Toronto Police Service depended entirely on others for the information it required to undertake its planning process. Information about the details and requirements for the G20 Summit was passed from the federal government, to the RCMP, and then to the Toronto Police Service. Until the federal government selected and announced the location and official venue for the event, the Toronto Police Service could not properly begin its planning process. After the location (Toronto) and venue (Metro Toronto Convention Centre) for the G20 Summit had been announced, the Toronto Police Service had only four months to develop its plans. As the entities that would bear the brunt of the policing and security for the G20 Summit, the Board and the Toronto Police Service should not have been excluded from the federal government's decision-making with regard to the event. The hallmarks

one would expect to see in putting together a major international security event – deliberation, cooperation, and sufficient time to plan – were absent.

Three major areas of the Toronto Police Service’s planning process became challenging because of the late point at which the federal government announced its location and venue decisions. In the area of funding, the Toronto Police Service was able to seek the Board’s approval for a request to the City of Toronto for funds only five months before the G20 Summit. This funding request was unusual. The City was to pay millions of dollars up front with the expectation that it would be reimbursed by the federal government later. However, at the time, no arrangement for this funding had been entered into. Therefore, there was a risk that some of the funds provided by the City might not be recovered.

The Toronto Police Service also needed to acquire equipment and facilities for use during the event. It advised the Board that without certain equipment or facilities, its ability to deliver adequate and effective policing for the G20 Summit was compromised. Without, at least, knowing that Toronto was the location for the G20 Summit, the Toronto Police Service could not begin the process of securing the equipment and facilities. The process for these acquisitions and arrangements was shorter than would have been ideal.

Finally, the development of the Toronto Police Service’s policing plans for the event was compromised. These types of plans would usually develop over the course of up to two years. In this case, the Toronto Police Service had only a matter of months. The planning process was made more complicated by the Toronto Police Service’s reliance on the RCMP for information that was critical to its own planning. The short amount of time available for this process meant that operational and field commanders were not properly involved in the planning and did not develop an appropriate level of familiarity with the plans. It also meant that the Toronto Police Service was unable to test its plans in advance of the Summit.

The ability to deliver adequate and effective policing for the G20 Summit was put at risk by the short time made available to properly plan all components of the Toronto Police Service’s operation. Had more time been available, the shortcomings of the Toronto Police Service’s policing role at the event would have been minimized.

In reporting to the Board, Chief Blair identified the timing challenges faced by the Toronto Police Service only in general terms. The Board itself was concerned about the amount of time available to plan the policing for the G20 Summit. Had the Chief provided the Board with more detailed information about how the short timeline was affecting the Toronto Police Service’s ability to properly plan and prepare for its policing role, the Board would have had a clearer picture of the potential risks to the Toronto Police Service’s operations during the G20 Summit. With this awareness, the Board could have acted earlier in the process to obtain more detailed information from the federal government. This information could have assisted the Toronto Police Service in its planning.

The Integrated Security Unit (“ISU”) was established to plan and coordinate security-related matters for the G8 and G20 Summits. For the G20 Summit, the ISU comprised five partners: the RCMP, the Ontario Provincial Police, the Toronto Police Service, Peel Regional Police and the

Canadian Forces. Each ISU partner was required to develop its own set of operational plans to cover its own functions during the G20 Summit. The ISU partners collaborated during the planning process to ensure the plans could function in coordination with one another. However, the short amount of time available to plan made full integration of all plans impossible.

The RCMP was the lead entity on all matters of security at the G20 Summit and had ultimate decision-making authority over all security operations. The ISU operated under the leadership of the RCMP. The ISU determined the security responsibilities that would be assumed by its various partners for the G20 Summit. This included the policing responsibilities and geographic areas of jurisdiction the Toronto Police Service would assume. The Toronto Police Service ultimately accepted these responsibilities and geographic areas.

Four security zones for the G20 Summit were established: the Controlled Access Zone; the Restricted Access Zone; the Interdiction Zone; and the Outer Zone. The Toronto Police Service was responsible for the Interdiction Zone and Outer Zone. Geographically, the Interdiction Zone fence became an important boundary between the G20 Summit's high-security areas and the rest of Toronto. The decision that the Toronto Police Service would assume responsibility for the Interdiction Zone had implications both in terms of where Toronto Police Service deployed its officers and specific tactical decisions that were made during the G20 Summit.

Under the federal *Foreign Missions and International Organizations Act* ("FMIOA"), the federal government may enter into an arrangement with a provincial government to "facilitate consultation and cooperation" for the policing of international events. Despite a request by the Province of Ontario for an arrangement, no arrangement was made. The decision by the federal government not to enter into an arrangement under the FMIOA was a missed opportunity. An arrangement could have brought clarity to the division of policing responsibilities. It could have also brought clarity with regard to the legal authorities on which each partners' role during the G20 Summit would be based. Had discussions concerning an arrangement under the FMIOA taken place early on, possibly different decisions would have been made on which policing partner would assume the responsibility for the various security zones. In particular, these discussions may have resulted in the RCMP assuming responsibility for the policing of the Interdiction Zone. In that event, a request by the Toronto Police Service for new legislative powers under the *Public Works Protection Act* would have been unnecessary.

The Toronto Police Service did not engage the Board in the planning process for the G20 Summit and the Board failed to obtain the detailed information it required to address its gap in knowledge. The Board was never aware of the process used to develop plans for G20 Summit policing. The Board's knowledge of the ISU and its actual role was inadequate. The Board was also not aware to what extent the Toronto Police Service was subject to the planning direction of the RCMP, including the ability of the RCMP to override planning decisions made by the Toronto Police Service. The Board's lack of knowledge in each of these areas is a matter of concern.

The Toronto Police Service's planning for the G20 Summit included the development of a mission statement, a "Concept of Operations," and a 26-chapter operational plan for the event. The Board never received or reviewed any of these important planning documents before the G20 Summit. As a result, the Board was never in a position to evaluate whether the Toronto Police Service

could fulfill its roles and functions for the G20 Summit adequately and effectively. The Board was also unable to engage in informed consultation with the Chief so that it could determine the Toronto Police Service's objectives, priorities, and policies for its policing role during the event. Without the information in these documents, and without even the knowledge that this information existed, the Board's oversight function was seriously impaired.

The short time for planning the policing for the G20 Summit and a failure on the Board's part to ask for information weakened the civilian oversight relationship between the Toronto Police Service and the Board. As a result, the Board did not have a clear sense of the framework and plan for the policing of the Summit. Instead of leading a consultative process with the Chief and setting the Toronto Police Service's objectives and priorities for the G20 Summit, significant matters were presented to the Board as 'done deals.' In general, the Board did not make the necessary inquiries to ensure it had the information it needed to fulfill its oversight function. In fact, even when Board members had questions or were unclear about a specific matter related to the policing of the G20 Summit, there is no evidence of any effort to pursue those matters and obtain responses that were available at the time.

Recommendation No. 7: Board to negotiate framework for funding conditions

In all cases where the Toronto Police Service will be involved in policing and security for a major event, the Board should, at a minimum, negotiate a framework funding agreement with the entity requiring the Toronto Police Service's assistance. This agreement should set out the funding and reimbursement conditions with respect to the Toronto Police Service's expenses associated with planning and policing the event.

Recommendation No. 8: Board involvement in consultation

Where the Board learns of the potential for Toronto to be selected as the host city for an event sponsored by the federal or provincial government, the Board should make a formal request that it be consulted, in advance of final decisions being made, on matters relevant to the Toronto Police Service's policing function at the event. In particular, the Board should request information that will enable it to understand the Toronto Police Service's role at the event, the legal framework applicable to the event's policing and other relevant matters.

Recommendation No. 9: Confirmation concerning Toronto Police Service's planning process

The Board should request regular updates concerning the progress of the Toronto Police Service in planning for the policing of a major event. In particular, the Board should seek information from the Toronto Police Service about (i) what mechanisms exist to capture, during the planning process, the input of those who will have operational decision-making

responsibilities during the event and (ii) what testing of the operational plans will be conducted before the event.

Recommendation No. 10: Time available for Toronto Police Service operational planning

Where the Toronto Police Service is required to develop operational plans for a major event, the Board should consult with the Chief of Police to determine whether there is a sufficient amount of time available for proper planning and, specifically, whether the adequacy and effectiveness of policing for the event may be compromised by the time available to plan.

If the adequacy and effectiveness of the Toronto Police Service's policing may be affected by the amount of time available for planning, the Board should communicate this to the government entity hosting the event and seek assistance to address challenges and gaps.

Recommendation No. 11: Board to be informed of possibility of major event

The Board should be informed, as soon as practicable, where a reasonable possibility exists that the Toronto Police Service may be involved in the policing of a major event hosted by a government entity. The Board should seek information and clarity concerning the proposed decision-making structure and process related to the policing of the event.

Recommendation No. 12: Board should insist on FMIOA agreement

Where the RCMP will be involved in an international event for which security arrangements are required, including the participation of the Toronto Police Service, the Board should encourage the federal and provincial governments to enter into an arrangement under section 10.1(4) of the *Foreign Missions and International Organizations Act*.

The Board should also seek an opportunity to provide input concerning the details of such an arrangement, including with respect to the policing functions the Toronto Police Service can fulfill for the event and the legal authorities on which the Toronto Police Service's involvement in the event's security will be based.

Recommendation No. 13: Toronto Police Service to provide information regarding planning structure to the Board

Where the Toronto Police Service is involved in a joint operation related to the policing of a major event, the Board should be provided with detailed information and briefings

concerning the planning structure, including information regarding the Toronto Police Service's role in that structure and whether planning decisions by the Toronto Police Service are subject to the approval of any other entity.

CHAPTER FOUR: TORONTO POLICE SERVICE OBJECTIVES AND PRIORITIES FOR THE G20 SUMMIT

Although the *Police Services Act* requires the Board to set the objectives and priorities for the Toronto Police Service, this did not occur in advance of the G20 Summit. Instead, this role was assumed by the ISU, under the leadership of the RCMP. In the earliest days of the planning for the G20 Summit, a pattern was followed in which the ISU defined certain objectives, priorities, broad responsibilities, and geographic jurisdiction for the policing of the event and the Toronto Police Service adopted them. The Board was merely advised about general aspects of the Toronto Police Service's responsibilities at various points in time, without any specifics.

As a result, the Board was unaware of the specific policing functions that the Toronto Police Service had agreed to assume for the G20 Summit. At no point before the G20 Summit did the Board consult with the Chief concerning the details of the Toronto Police Service's role during the G20 Summit or what the full scope of policing required for the event would be. Board Chair Mukherjee confirmed this in his interview with the Review:

"...I don't think the Board understood. I mean, again, beyond the general sense that there'll be leaders to be protected and there will likely be protests and demonstrations, I don't believe there was any understanding of the full scope of policing that this would involve, or the nature of policing that would be involved."

One of the priorities for G20 Summit security was protection of the Interdiction Zone fence. This was the fence that served as a buffer between the G20 Summit site, which was controlled by the RCMP, and the rest of the city, which was policed by the Toronto Police Service. At no point was consideration given to the RCMP assuming responsibility for the Interdiction Zone rather than the Toronto Police Service.

The significance of this buffer to the overall security of the event, combined with the ISU's focus on the protection of Internationally Protected Persons, created a preoccupation with the Interdiction Zone fence. This preoccupation by the Toronto Police Service influenced its decisions concerning the allocation of resources and specific deployments. Officer notes made during the G20 Summit confirm that the Toronto Police Service's focus was protecting this fence:

MICC [Toronto Police Service Major Incident Command Centre] strategy to keep crowd away.

[L]eave units on fence but get them in a line.

OZ [Outer Zone] – plan to secure fence

The Toronto Police Service's preoccupation with protecting the Interdiction Zone detracted from its ability to police the rest of the city and caused a policing vacuum in the Outer Zone. On the afternoon of Saturday, June 26, the Toronto Police Service was unable to adequately and effectively manage the violence and property damage taking place in the city. Despite this violence and property damage, officers assigned to police the Outer Zone were often deployed near the Interdiction Zone fence. Ultimately, the Toronto Police Service lost control of the Outer Zone – the very area it had a statutory obligation to police.

It was a mistake for the Toronto Police Service to prioritize policing the Interdiction Zone. As a result of this mistake, a significant redeployment of resources was required. RCMP and OPP officers still at the G8 Summit in Huntsville were sent to Toronto. The Toronto Police Service also requested that the RCMP take over command of the Interdiction Zone. The request was made so that the Toronto Police Service could redeploy its resources to the Outer Zone. Unfortunately, there was no plan in place for a large reallocation of resources or the transfer of command from one ISU partner to another. This planning gap meant that redeployment and transfer of command plans had to be created at a time of crisis. It also meant that twelve hours passed before the RCMP agreed to assume command of the Interdiction Zone from the Toronto Police Service. This passage of time was unacceptable. Given that violence and property damage were reasonably anticipated by the Toronto Police Service in planning for the G20 Summit, a contingency plan for the reallocation of officers and the transfer of command to the RCMP should have been prepared in advance of the event.

The combination of short timelines and a Board that did not assert its oversight role resulted in a planning error. In accepting the objective of securing the Interdiction Zone, the Toronto Police Service left the Outer Zone exposed to some of the violence and property damage that have become the unfortunate images of the G20 Summit. Had the Board and Chief engaged in proper consultation on the Toronto Police Service's focus for the G20 Summit, a more balanced approach to the Toronto Police Service's objectives and priorities for G20 Summit policing may have been established. Certainly, the Board would have emphasized the need to make the Outer Zone the Toronto Police Service's first priority. This could have minimized the extent of the breakdown that occurred on June 26.

CHAPTER FIVE: COMMAND AND CONTROL

In January 2010, a small working group of representatives from each of the ISU partners began meeting for the purpose of creating a document that would set out the command and control structure for the G20 Summit. Each ISU partner had the ability to raise particular concerns and suggest amendments to the draft document. Ultimately, the partners resolved all issues and produced a document that was "acceptable to all." The *2010 Summits Command and Control (C2) Document* ("C2 document") was approved on June 17, 2010.

The C2 document outlined the responsibilities of each of the ISU members. The RCMP was the "lead security agency" and was responsible for protecting the Internationally Protected Persons ("IPPs"), securing the G20 Summit site, and for supporting its policing partners. The Toronto

Police Service was responsible for “its mandated obligations under the *Police Services Act*” and for supporting the RCMP is its “federally legislated mandate.”

There were four layers of command for the G8 and G20 Summits. The Unified Command Centre (“UCC”) was located at the ISU headquarters in Barrie, Ontario and was the highest level of command and control for the G8 and G20 Summits. It was comprised of commanders from all ISU members, but was under the command of an RCMP commander. The UCC Steering Committee was a body comprised of senior officials from each of the ISU partners and was responsible for providing “senior executive oversight during the [G20 Summit].” The Steering Committee was not, however, “a decision making body in the chain of command.”

The next entities in the command structure were the Area Command Centres: one for Muskoka (G8 Summit) and another for the Toronto Area (G20 Summit – “TACC”). The TACC was located at Lester B. Pearson International Airport and served as a link to the UCC. It was also under the command of an RCMP commander.

The Major Incident Command Centre (“MICC”), located at Toronto Police Service Headquarters, exercised command and control of all Toronto Police Service resources, including external officers recruited from other police services, who were deployed to the Interdiction Zone and the Outer Zone. The MICC was under the command the Toronto Police Service and reported to the TACC, not the UCC. Finally, the last level of authority with respect to the Toronto Police Service was a “site.” Toronto Police Service Site Commanders were deployed on the ground and were responsible for making specific tactical decisions. RCMP sites located in the RAZ and CAZ reported directly to the TACC.

The C2 document began with the general premise that the police force with command of a particular security zone (the RAZ, CAZ, IZ, or OZ) was responsible for authorizing all tactical decisions made in that zone. An annex to the C2 prescribed the level of command (Site Commander, MICC, TACC or UCC) that had the power to authorize a particular action, including the deployment of public order units, arrest and detention, and the use of tear gas. Only one level of command had the power to authorize a particular action. Once an authorization had been given, all other levels of command were to be informed that the authorization had been given.

The C2 document fell short in two important aspects. First, resources deployed to the Outer Zone were to be under the command of the MICC, but, the C2 document did not contemplate a direct command link between the MICC and RCMP and OPP resources (site commanders) deployed to that zone. Instead, it provided that RCMP and OPP resources were under the direct command of the TACC. During the G20 Summit, at least one RCMP troop deployed to the Outer Zone on June 27 was taking orders directly from the TACC, rather than the MICC. This meant that for a period of time on June 27, there were, in effect, two chains of command operating simultaneously in the Outer Zone. This created confusion for the RCMP site commander and created the potential for conflicting orders being given to officers in the same security zone. Indeed, this gap in the C2 document led to fairly widespread confusion among RCMP and OPP commanders deployed to the Outer Zone on June 27. In debriefing sessions, both RCMP and OPP site commanders reported that it was difficult to determine *who* was in charge.

The second gap in the C2 document was the lack of any process or procedure for the transfer of command of a particular security zone from one ISU partner to another. The violence and property damage that occurred on June 26 prompted the Toronto Police Service to move the majority of its officers deployed to the Interdiction Zone to the Outer Zone. Those officers were replaced by RCMP and OPP officers redeployed from the G8 Summit. As part of that process, the Toronto Police Service requested that the RCMP take command of the Interdiction Zone. The lack of an existing process meant that transfer of command took more than 12 hours and delayed the Toronto Police Service movement of much-needed resources into the city. Ultimately, this impeded the Toronto Police Service's ability to adequately and effectively police the Outer Zone. Had the C2 document included a specific transfer of command process, many of those vital hours may not have been lost.

The more complex a police operation is the more essential it is that all of the police services involved have a clear understanding of the scope of their authority. The governing document that addresses this purpose should be clear, comprehensive, and sufficiently detailed. Given the size and complexity of the G20 Summit policing operation, these two gaps should have been addressed.

The Board received no information with respect to the command and control structure for the G20 Summit. Given its responsibility for the provision of adequate and effective policing in the City of Toronto, the Board should have sought sufficiently detailed information to be confident that mechanisms were in place to govern how the Toronto Police Service would give orders to the thousands of officers deployed to the areas under its command. In addition, given the multi-jurisdictional nature of the policing of the G20 Summit and the potential for police officers in the City of Toronto to become subject to the command of the RCMP, it was incumbent on the Board to understand what command and control structure was in place.

Recommendation No. 14: **Board to obtain information concerning the command and control structure for multi-jurisdictional policing events**

The command and control structure for the policing of a particular event has a direct impact on the manner in which police services will be delivered. When the Toronto Police Service is involved in a multi-jurisdictional policing event in Toronto, the Board shall require information from the Chief of Police concerning the command and control structure for the event. The Board shall also ensure that the command and control structure will enable the Toronto Police Service to adequately and effectively provide police services for the event and for the City of Toronto generally.

CHAPTER SIX: BOARD'S KNOWLEDGE OF G20 SUMMIT MATTERS

The Board must obtain all relevant information so that it can ensure adequate and effective policing in Toronto. The Board should be well-informed on community issues, public safety concerns, and policing strategies and tactics so that it can identify the information it requires to

make a decision or recommendation, and to establish the Toronto Police Service's objectives and priorities.

The Board receives most of its information from the chief of police. This information is generally communicated during official Board meetings. All too often, the chief of police is required to act as the main "gatekeeper" of information transmitted to the Board. This places the chief of police in the position of having to regulate the flow and substance of information provided to the Board, as opposed to the Board having more control over what information it obtains. As a result, meetings between the chief of police and the Board often take the form of a one-way address as opposed to a consultation concerning issues and matters impacting the Toronto Police Service. True consultation – that is, an open exchange of information, ideas, and, sometimes, debate – is required if the Board is to meet its significant legislative duties.

There are two primary reasons why the chief of police has been unable to transition beyond this gatekeeper role. First, the Board, incorrectly, has the view that it is improper for it to seek information from the Chief on operational matters. However, correctly interpreted, the *Police Services Act* places no limit on the type of information the Board can obtain from the chief of police, including operational information. Second, the Board constantly struggles to identify what questions it needs to ask the chief of police to ensure it has sufficient information to perform its statutory functions. The Board's incorrect understanding of what information it is entitled to obtain and its challenge in asking the right questions have operated to unnecessarily constrict the flow of relevant information to the Board. This has weakened the Board's civilian oversight authority.

The recent experience with the G20 Summit in Toronto underscores the importance of developing a culture within the Toronto Police Service that is founded on the cooperative exchange of information, operational or otherwise, between the chief of police and the Board. The Board received very little information about the framework and plans for policing the G20 Summit. In certain instances, the Board was left completely in the dark on details of the Toronto Police Service's plans and priorities for the policing of the G20 Summit.

Some Board members felt that the Chief was quite "secretive" with the information he had about the G20 Summit. Certain Board members speculated that the Chief's handling of information stemmed from the Chief himself not being fully briefed on all relevant information pertaining to the G20 Summit. Other Board members indicated that the Chief felt that he could not disclose certain information to the Board because of its confidential or sensitive nature. Still other Board members suggested that the Chief did not share certain information with the Board because, in the Chief's opinion, the information concerned operational matters and were not the Board's concern. What is clear from the record is that the Chief's non-disclosure of certain information to the Board with respect to the G20 Summit led to confusion, or even a complete lack of understanding, among Board members on a number of important policing issues. While the Chief had considerably more information about the G20 Summit than what was communicated to the Board, the Board must take responsibility for its own lack of knowledge concerning the Toronto Police Service's plans and priorities for policing the Summit. In fact, it was the Board's action – and inaction – that resulted in its lack of the information it needed on the G20 Summit to effectively discharge its oversight responsibilities.

For example, in an e-mail from Chair Mukherjee to the Chief on March 16, 2010, the Board directed the Chief to report on only three items: (i) budget, procurement and other financial issues, (ii) community and media relations issues, and (iii) human resource issues. This was the only specific direction the Board provided to the Chief regarding the information it wished to have on the policing of the G20 Summit. In the e-mail, the Chair specifically advised the Chief that it was not seeking information about confidential operational matters. This direction unnecessarily limited the information that would be provided to the Board over the coming months to these three basic items.

The Board could have asked questions about how the plans for the G20 Summit were unfolding, what specific policing role the Toronto Police Service would be discharging during the G20 Summit, or how decisions about critical aspects of policing the event were being made, but it did not. By not asking these and other questions, the Board created significant gaps in its knowledge regarding essential matters relating to the Toronto Police Service's planning and policing of the G20 Summit. These gaps concerned: the legal framework for policing the G20 Summit; the role and function of the ISU; the Toronto Police Service's operational plans for the event; the command and control structure and the Toronto Police Service's role, duties, objectives, and operational authority within that structure; and the nature of the relationship between the Board and the external police officers seconded to assist with the policing the G20 Summit.

Without this information the Board rendered itself a virtually voiceless entity. To a large extent, the Board became irrelevant throughout the G20 Summit planning process. In addition, without specifics about the Toronto Police Service's role within the larger security framework for the event, the Board did not have the information it needed to fulfill its oversight responsibilities under the *Police Services Act*.

There is one example of a Board member who attempted to seek detailed information about G20 Summit policing matters. In particular, this Board member sought information on whether appropriate safeguards would be in place for the use of the Long Range Acoustic Device (the "LRAD"). The record shows that these efforts to obtain information were not supported, encouraged, or fully and sufficiently addressed by the Board as a whole. Instead, the Board member was criticized by the Chair for raising this issue. The work done by this Board member to obtain relevant information and ask detailed questions is an example of the standard Board members should meet. The Board should have encouraged and facilitated these efforts rather than shutting them down.

Another Board member and city councillor also encountered some issues regarding the sharing of information on G20 Summit matters. A complaint was initiated by the Chair against Councillor Vaughan in respect of a newsletter that he distributed to his constituents on February 11, 2010. In that newsletter, Councillor Vaughan referred to a "classified briefing" that he had received. According to Chair Mukherjee, this reference suggested that the newsletter contained information about matters that were discussed in a confidential Board meeting and, therefore, it was a breach of Councillor Vaughan's Board member oath of secrecy to have publically divulged this information. While Councillor Vaughan took responsibility for using the term "classified" in his newsletter and agreed that, in hindsight, the use of the term was inappropriate, he confirmed that the information contained in the newsletter was not information he received as a Board member.

Based on my review of the record, I find that the content of Councillor Vaughan's newsletter did not include any information that he received at a confidential meeting of the Board. Therefore, there was no breach of his oath of secrecy. Unfortunately, the complaint against Councillor Vaughan negatively impacted on the information-sharing situation between the Chief and the Board in the lead up to the G20 Summit.

Collectively, these challenges in the flow of information led some Board members to become disengaged from their duties during the planning of the G20 Summit. This disengagement meant that the Board failed to seek the information it needed to discharge its civilian oversight obligations.

The recommendations that I have made regarding the information sharing practices between the Board and the Toronto Police Service are intended to ensure that where critical points arise – such as a major policing event in which the Toronto Police Service will participate – a mechanism will be in place to encourage and preserve the flow of relevant information to the Board.

Recommendation No. 15: **The Board should record confidential Board meetings**

Properly recording discussion and information provided during Board meetings is critical. It ensures that an accurate record of the questions asked and decisions or recommendations made is preserved. The Board should institute a practice of audio recording all confidential Board meetings.

Recommendation No. 16: **The Board should develop a mechanism to ensure all Board members are canvassed in advance of pre-meeting agenda briefings**

The pre-meeting agenda briefings present a useful opportunity for the Chair and Board Staff to identify areas and issues that may be of concern or interest to the Board and that should be placed on the agenda, and to work with the Chief and his staff to obtain information the Board requires. The Board should develop a mechanism that requires canvassing all members in advance of these briefings to identify questions or requests for information that can be conveyed by the Chair during the briefings.

Recommendation No. 17: **The Board should create a policy requiring open communication and sharing of information between all Board members**

The Board should develop a policy that sets guidelines for the exchange of information between Board members. Under this policy all Board members would be required to share, at the earliest opportunity, information he/she receives through informal communications

with the Chief on a particular matter or issue that is before the Board or that otherwise falls within the Board's statutory role and responsibilities.

Recommendation No. 18: Where time is of the essence for procurement, the Board must maintain a monitoring role

While specific timing issues may require the Board to pre-authorize certain expenditures in order to hasten the procurement of equipment and other supplies, the Board should maintain an oversight role with regard to this process. Where time is of the essence and the Board decides to suspend or alter its usual procurement practices, the Board should establish a process that will ensure it receives relevant information from the Toronto Police Service regarding the purpose and justification of all expenditures.

Recommendation No. 19: The Board should be involved in the negotiation of contribution agreements pertaining to the Toronto Police Service's involvement in a policing event

Where a contribution agreement with a government entity will determine the recovery of costs applicable to the Toronto Police Service's involvement in a policing event, the Board must be involved in the negotiation of the contribution agreement. The Board should also obtain legal advice concerning the Board's financial exposure as a result of the contribution agreement and, in particular, whether there are any provisions that may place at risk the Board's ability to recover all funds spent for the policing event.

Recommendation No. 20: Board policies and Toronto Police Service procedures should apply to police personnel seconded to assist the Toronto Police Service in a joint operation

Board policy and Toronto Police Service procedures should apply to external police officers seconded to assist in policing the city of Toronto where those officers are under the command and control of the Toronto Police Service. The home police services boards should be required to formally adopt the relevant Board policies and Toronto Police Service procedures as their own. In that regard, the Board should provide its policies and the Toronto Police Service procedures to the home police services board so that it can help ensure that its officers are familiar with these policies and procedures. If external police officers violate Board policies or Toronto Police Service procedures while carrying out their duties in assisting the Toronto Police Service, the home board or their complaints and disciplinary oversight body should have the authority to discipline those officers, thereby avoiding any jurisdictional dispute between the Board and the home boards.

Recommendation No. 21:

The Board should receive information on any training developed by the Toronto Police Service for a major event

The Board should receive information related to the training of Toronto Police Service officers and other external officers seconded to assist the Toronto Police Service with policing a major event. The information the Board receives should permit it to determine whether the training accords with the Board's existing policies and give the Board an opportunity to identify any gaps in its policies that need to be addressed prior to the event. Such information should include, but is not limited to, any material developed to aid in the training, details concerning how the Toronto Police Service plans on monitoring compliance with the training and details concerning who is required to undergo the training and what form of training is being provided to the officers.

Recommendation No. 22:

The Board should review the Toronto Police Service's continuity of service plans for major policing events

Where there is a large event that may impact upon the Toronto Police Service's ability to deliver regular policing officers in Toronto, the Board should consult with the Chief of Police concerning how continuity of service can be achieved. The Board should be provided with any plans developed by the Toronto Police Service to aid in the consultation.

Recommendation No. 23:

The Board should amend its information sharing protocol with City Council

The Board should amend its existing information sharing protocol with City Council to include a mutual information sharing mechanism. This mechanism should address the type of information to be shared and the method and frequency for sharing such information. The Board should also work with City Council to develop a protocol that ensures there is a free flow of communication to and from the Board and City Council with respect to the policing of major events.

Recommendation No. 24:

The Board should, with the assistance of the Ontario Association of Police Services Boards analyze the issues and concerns raised with respect to sharing confidential or classified information

Sharing confidential or classified information between different policing partners is a complex issue that requires further study. Accordingly, I recommend that the Board request that the Ontario Association of Police Services Boards examine this issue carefully and propose solutions that would ensure that sensitive information is protected without

detracting from the requirement that municipal police services share relevant information with the police services boards.

Recommendation No. 25: The Board should develop an information sharing policy for major events

The Board should develop a specific information-sharing policy tailored specifically for major policing events. The policy should include a direction concerning the manner and frequency in which the information should be provided to the Board.

Under this policy, the Chief of Police would be required to provide the Board with information, at the earliest possible opportunity, with respect to the following matters, at a minimum: the nature of the event; the policing, security and other entities involved in planning the event; whether the Toronto Police Service is taking planning or operational direction from another entity; information about Toronto Police Service's proposed priorities and objectives; the need for any requests for legislative change to accommodate the Toronto Police Service's policing of event; and information about specific policing strategies or techniques that may be used during the event itself.

CHAPTER SEVEN: TRAINING OF POLICE FOR THE G20 SUMMIT

More than twenty thousand police, military, and security personnel across Canada came together to help police the G20 Summit in Toronto. All external police officers were generally required to abide by the Ontario *Police Services Act* and Toronto Police Service policies and operational guidelines. Officers from outside Ontario were appointed special constables for the purposes of ensuring they had the legal authority to enforce Ontario statutes that came into play during the policing of the G20 Summit.

Given the joint-operational nature of this event, the Toronto Police College developed and implemented a training program for all regular and special officers (e.g. Public Order Unit, or "POU") who would be under the operational command of the Toronto Police Service during the G20 Summit. The training program was aimed at providing these officers with a basic overview of the skills and tools they would require during the event.

The training was delivered through computer-based learning modules as well as face-to-face sessions. The computer-based training covered topics such as crowd dynamics and management; public order incidents; investigative detention; search and seizure the arrest process; and, the use of specialized equipment, such as the Long-Range Acoustic Device. Officers from outside Ontario who were deployed to police the G20 Summit received additional training on provincial laws they may have had to enforce during the event.

The face-to-face training focused on incorporating and reinforcing certain cognitive skills and providing practical instruction on use of force options. Training was provided on issues that might affect public and officer safety and included a review of crowd management protocols, operational considerations, and defensive and front-line tactics. Part of the training involved practical exercises which were evaluated and assessed by an instructor.

A separate, two-day training program was developed for the POU officers and used simulated scenarios to permit officers to practice specific skills, proper tactical formations, and arrests. POU teams also received training on the various legal authorities that could be engaged during the policing of the G20 Summit.

The substance of the training administered to officers covered a broad range of topics related to policing the G20 Summit, with a particular focus on crowd dynamics and management. Crowd management skills are a critical component of safety planning for any major event and were essential in the case of the G20 Summit given its unprecedented size, the thousands of police and security personnel involved, and the security requirements for the event. While the training materials developed were clearly presented and highly relevant to maximizing safety in mass protest situations, the training was lacking in several respects.

First, the training would have benefitted from a more detailed discussion of the relationship between the exercise of police powers, such as arrest, and the relevant *Charter* rights and freedoms engaged in policing mass public demonstrations, such as the freedom of peaceful assembly. There should have been a greater emphasis in training on the police officers' responsibility to protect and facilitate the public's exercise of their fundamental rights and freedoms under the *Charter*.

Second, many of the images and much of the language used in the training materials to depict protestors was unbalanced. Representations of rioting crowds, violent protestors, and anarchists left the impression that all protestors at the G20 Summit would engage in destructive protest activity and that police officers would be required to respond with aggressive crowd control measures.

Third, given the increased potential for violence and civil disorder in a mass protest situation, all officers deployed to the G20 Summit should have received more practical skills training than was offered. This should have included simulated scenario training with groups of non-violent and violent protestors that focus on the powers of police to detain or arrest, as well as the legal rights an individual has when the police engage in such conduct.

Overall, the lack of communication between the Board and the Toronto Police Service regarding officer training for the G20 Summit is a matter of concern. The Toronto Police Service did not consult with the Board before developing the training program and materials. The Board was also not advised of concerns raised by the Toronto Police Service Training Coordinator early in the development of the training program regarding the sufficiency and method of delivery of the training.

The Board itself made no effort to obtain specific information about the training that would be delivered. This is despite the fact that the Board was advised by Chief Blair on June 11, 2010 that

external officers seconded to assist with policing the G20 Summit would be required to follow Board policies and Toronto Police Service procedures. The Board's lack of engagement in relation to training caused it to have absolutely no information on what topics the training would cover, who would receive training, or the training methods developed for the G20 Summit. As a result, the Board was not aware of whether the training adequately reflected its policies or whether the training covered areas of policing for which a new Board policy may have been usefully created.

Recommendation No. 26: **The Toronto Police Service and the Board should work together to develop the training materials for a major event**

The Toronto Police Service should share information with the Board on the training being developed for officers participating in a major event. This information should include: the topics to be covered, an overview of the general content, and any potential issues or concerns raised regarding the sufficiency of the training materials. The Board should examine the information provided with a view to maximizing the overall effectiveness of the training materials and ensuring that the materials properly reflect existing Board policies. This examination should include an assessment of the methods of delivery of the training (e.g. E-learning, practical exercises, etc.).

CHAPTER EIGHT: THE POLICIES AND PROCEDURE CONCERNING CROWD CONTROL AND MASS DEMONSTRATIONS

The Board had policies in place before the G20 Summit that dealt with aspects of crowd control and mass demonstrations. They were entitled "Arrest," "Public Order Units," and "Preliminary Perimeter Control and Containment." However, the Board did not have a policy that squarely and comprehensively addressed the general subject.

The same can be said with respect to Toronto Police Service procedures bearing on crowd control and mass demonstrations. Two of its procedures made it reasonably clear that they were intended to relate to protester demonstrations of a much smaller order than those which took place during the G20 Summit.

Chief Blair advised the Review that he had "every expectation that the procedures would be integrated into the training material," and that the police service "always monitors compliance" with procedures. Accepting that this latter statement may fairly relate to day-to-day policing, this was not the case during the policing on June 26 and 27, 2010.

The cases of ineffective policing and excessive use of force during the G20 Summit were not significantly the result of non-compliance with police service procedures but, rather, a host of other factors beginning with inadequate preparation time.

Crowd control and mass demonstrations is a policing function of increasing importance. To provide the Toronto Police Service with its guidance in this area the Board, working with the

Ontario Association of Police Services Boards and other bodies that would be of assistance, should prepare a comprehensive policy on crowd control at mass demonstrations.

Recommendation No. 27: **Board to create a comprehensive policy on crowd control at mass demonstrations**

The Board, with the assistance of the Ontario Association of Police Services Boards and other bodies that would be of assistance, should prepare a comprehensive policy on crowd control at mass demonstrations. This policy should address the following subject matters, among others: necessary preparation times for adequate planning; command structures; the organization and dissemination of intelligence; incident management systems; the adaptation, if necessary, of existing services procedures for use during the contemplated event; and training.

CHAPTER NINE: POLICIES AND PROCEDURES ON THE WEARING OF NAME BADGES

The Board has a policy that has been in place since 2005 that requires police officers to wear name badges. Its only documentation is in the minutes of a board meeting held in September of 2005 that read: “It is recommended that: the Board approve the implementation of police identification uniforms in 2005.” This is a very important policy that should be made expressly as such and included in the catalogue of Board policies.

The Toronto Police Service, at all relevant times, had a procedure in place that required the wearing of name badges.

The non-wearing of name badges by Toronto Police Service officers was not brought to the attention of the Toronto Police Service through its own monitoring system, even though the non-wearing of name badges could not have gone unnoticed by senior officers.

Twenty-eight other police services from across the country assisted the Toronto Police Service during the G20 Summit. Chief Blair informed the Review that these police services had different requirements regarding the identification of officers and, accordingly, the Toronto Police Services procedures did not apply to them. This was a result of a provision in the standard memorandum of agreement between the Board and the external police services for policing of the G20 Summit. The effect of this provision was that the external officers policing the G20 Summit would act contrary to the Board policy without consequence. This issue and others should have been examined closely by the Board before the memoranda of agreements were approved and executed.

In terms of penalties imposed, 66 breaches of the rule requiring identifiers to be worn by Toronto Police Service officers were substantiated and led to the loss of an eight hour day of pay. Separately, 53 breaches were substantiated that lead to a penalty of two eight hour days of pay.

The intentional non-wearing of a name badge by an officer carrying out his or her duties is an extremely serious offence. It is a fundamental breach of duty for police officers to remove their name badges so that they may exercise their powers with intentional anonymity. The inevitable effect is to undermine the public's trust in the police force, a trust that is essential to the provision of effective police services.

Recommendation No. 28: **Board policy on the wearing of name badges and/or police badge numbers**

The Board should express its policy on the wearing of name badges and/or police badge numbers in its standard policy format and include it in its catalogue of policies. The policy should require the chief of police to report to the Board on a regular basis concerning incidents of non-compliance with the policy.

CHAPTER TEN: THE *PUBLIC WORKS PROTECTION ACT* AND ONTARIO REGULATION 233/10

Three weeks before the G20 Summit began the Lieutenant Governor in Council made O. Reg. 233/10 under the *Public Works Protection Act* (“*PWPA*”). The regulation designated parts of the area within the Interdiction Zone as “public works.” That designation provided police officers with additional powers to search and arrest people without warrant and to refuse entry to those wishing to enter the Interdiction Zone.

The ISU considered it vital for the Toronto Police Service to establish a security perimeter around the Interdiction Zone. Early in the planning process, the Toronto Police Service Planning Team sought a legal opinion from City of Toronto Legal Services regarding the legal bases it could rely upon to establish a security perimeter and enforce an accreditation system. The opinion identified two potential sources of power: (1) police ancillary powers at common law and (2) an arrangement between the federal and provincial governments under s. 10.1(4) of the *Foreign Missions and International Organizations Act* (“*FMIOA* arrangement”). It concluded that neither would provide the “firm legal basis” the ISU or the Toronto Police Service was looking for. The opinion did not make any reference to the *PWPA*.

It appears that the *PWPA* was being considered as a possible source of power for the Toronto Police Service in April 2010. At that point, the *PWPA* and the *FMIOA* were being considered simultaneously as possible legal bases for the establishment of a security perimeter around the Interdiction Zone. On May 7, 2010, the Ontario Deputy Minister of Community Safety and Correctional Services wrote to the Deputy Minister of Public Safety Canada formally requesting that the provincial and federal governments enter into an *FMIOA* arrangement. The letter noted that such an arrangement would “enhance” the provision of security at the G20 Summit. On June 11, 2010, the federal Deputy Minister responded and denied the request. The Deputy Minister’s letter stated that sufficient common law and statutory powers already existed.

The Toronto Police Service was not satisfied without some additional source of power to secure the Interdiction Zone. On May 12, 2010, Chief Blair wrote to the Ontario Minister of Community Safety and Correctional Services and requested that the area within the Interdiction Zone fence be designated as a “public work” under the *PWPA*. In his letter, Chief Blair explained that the Interdiction Zone security perimeter was a “cornerstone” of the G20 Summit security plans and that the provisions of the *PWPA* would “offer legal support for the extraordinary security measures being undertaken for this unusual event.”

On June 15, 2010, the Ontario Minister of Community Safety and Correctional Services wrote to Chief Blair and informed him that O. Reg. 233/10 had been passed in response to the Chief’s request. O. Reg. 233/10 was a regulation made under the *PWPA* and provided that specific areas within the Interdiction Zone were designated as “public works.” The regulation came into force on June 3, 2010 and was revoked on June 28, 2010.

Chief Blair’s request under the *PWPA* was made before any discussion took place with Board. The Chief’s request was sent to the provincial government on May 12, 2010, eight days before the May 20, 2010 Board meeting at which the request was discussed for the first time. In addition, the information that was given to the Board at the May 20th meeting was unclear and incomplete. The agenda for the meeting said that the Toronto Police Service would be asking the Province “to designate various properties and/or spaces situated within the City of Toronto to ensure that they are properly protected subject to acts of violence.” While the Chief made a passing reference to the *PWPA* during the meeting, the Board was not provided with a copy of the *PWPA* or Chief Blair’s letter to the Minister. It was not advised that the “properties and/or spaces” in question related to the Interdiction Zone. As a result, Board members did not understand that the Toronto Police Service was requesting a change in legislation that, if granted, would give its officers additional enforcement powers. When asked during her interview if she understood nature of the Chief’s request or its legal ramifications, one Board member answered simply, “No, not at all.”

Effective consultation between the Board and Chief on this issue required a level of basic information. In this case, that information should have at least included express reference to the provisions of the *PWPA*, an explanation of the additional powers that would be granted to police officers, and details of the request itself. Moreover, the information should have been provided *before* the Toronto Police Service made the request of the Ontario Government. There is little point in the Chief consulting the Board on a matter *after* a decision has been made or specific action has been taken.

There is currently no statutory provision in Ontario or Board policy that prescribes the process through which a police service or police services board may seek legislative changes. Ontario Regulation 544/91, which concerns the political activities of municipal police officers, and the related Board policy, are not relevant and I note that Chief Blair’s request under the *PWPA* did not contravene those authorities. The absence of a Board policy has led to confusion as to which entity – the Toronto Police Service or the Board – is responsible for seeking legislative changes that will affect law enforcement powers.

The Board is the proper entity to make requests of government for legislative change. Legislative action, including action that can result in the granting of additional law enforcement powers to

police officers, affects the very framework in which police services are delivered in Toronto. It is the Board's responsibility to maximize the delivery of adequate and effective policing within this framework and, where it believes the framework requires improvement in this regard, to seek those improvements.

On June 25, 2010, the day before G20 Summit began, Chief Blair was asked during a press conference about the boundaries of the area designated as a "public work" by O. Reg. 233/10. As part of his answer, Chief Blair told the reporters present that the *PWPA* applied within the Interdiction Zone and up to five meters *outside* of the Interdiction Zone fence. This interpretation of O. Reg. 233/10 was incorrect. Chief Blair answered the question on the basis of a briefing he had received from Toronto Police Service legal advisers before the press conference took place. There is no indication that this interpretation was offered as a result of any intention to mislead the public.

The source of the incorrect interpretation appears to have been a reference to "within 5 meters" in Schedule 2 to O. Reg. 233/10. To properly secure the Interdiction Zone, it was vital that its entire fence was located on a "public work." The majority of the fence was located on public property, which automatically fell under the definition of "public works." However, three small portions of the fence were located on private property. It was necessary, therefore, to designate specifically those strips of land as "public works" in Schedule 2 to O. Reg. 233/10 to ensure that the *PWPA* applied to the entire Interdiction Zone fence line. Reference to these five meter strips of land was included in Schedule 2. The confusion appears to have been caused by the complicated legal language Schedule 2 used to describe these three strips. The Toronto Police Service prepared for the G20 Summit on basis of the incorrect interpretation of O. Reg. 233/10 and officers were incorrectly advised that the *PWPA* applied up to five meters outside of the Interdiction Zone fence.

Following Chief Blair's press conference on June 25, the Toronto Police Service was contacted by the Ontario Ministry of Community Safety and Correctional Services and informed that its interpretation of O. Reg. 233/10 was incorrect. Chief Blair immediately directed his legal counsel to draft a clarification which could be distributed to officers to advise them of the limits of their authority. That clarification was distributed to officers in the early evening of June 25 as they were being deployed and was also transmitted by radio.

However, the Toronto Police Service took no steps to provide a correct interpretation of O. Reg. 233/10 to the public. While the Toronto Police Service should not generally be responsible for explaining legislation to the public, it was responsible for public dissemination of the incorrect interpretation. Therefore, the Toronto Police Service should have taken steps in this case to notify the public as soon as it became aware of its mistake. It was important for members of the public to understand what additional powers the police had been granted so that they could govern their conduct accordingly.

Chief Blair also addressed the "five meter rule" at a press conference after the G20 Summit had concluded. Following the conclusion of that press conference, he was asked in passing why the designation under the *PWPA* was required in the first place. Chief Blair responded that it was to

“keep the bad guys out.” That comment referred to the need for O. Reg. 233/10 and not the Toronto Police Service’s failure to correct its incorrect interpretation of the regulation.

The events surrounding the incorrect interpretation of O. Reg. 233/10 highlight the need for Board involvement in communicating to the public changes in legislation that relate to police powers. The Board played no role in correcting the Toronto Police Service’s mistake because it played no part in communicating the effect of O. Reg. 233/10 to the public in the first place and was not aware that the “five meter rule” was incorrect until it was reported in the media. If a legislative change is made that affects the Toronto Police Service’s powers, the Board has an important role to play in communicating those changes and their consequences to the public. The Board’s role is particularly important where changes to the law have a direct impact on the scope of law enforcement powers that the police will have in their dealings with the public.

Recommendation No. 29: **Creation of a Board policy concerning the seeking of legislative change**

The Board should make a policy on the process governing the seeking of changes to legislation on the provision of police services. Under this policy, the Chief of Police should be required to advise the Board when the Chief of Police is of the opinion that the current legislative powers are not sufficient for the purposes of carrying out any police responsibilities or otherwise should be amended.

Once advised, the Board should obtain legal advice concerning the type of legislative change that would be required to address the Chief of Police’s concern and determine whether it wishes to make a request for change to the relevant level of government. All requests for legislative change that may affect the Toronto Police Service’s delivery of policing services should be made by the Board.

Following the implementation of this policy, the Board should also remove as a standing item on its agenda the opportunity for the Chief to inform the Board of his attempts to secure legislative changes.

Recommendation No. 30: **Communication of legislative changes to the public**

The Board should create a policy that addresses how legislative changes that may affect policing by the Toronto Police Service will be effectively communicated to the public in advance of major events. The policy must ensure that the public receive adequate and correct information concerning police powers in a timely manner.

CHAPTER ELEVEN: THE PRISONER PROCESSING CENTRE

The Prisoner Processing Centre (“PPC”) was designed and built by the Toronto Police Service to be a central hub for the processing of persons arrested in relation to the G20 Summit. Early in the planning process, the Toronto Police Service analyzed its existing prisoner processing and holding facilities and concluded that they would be unable to handle the volume of arrests expected at the G20 Summit. The primary concern was that existing facilities were not large enough and that bottlenecks in prisoner processing would lead to delays. Because legal standards require prisoners to be processed in a timely manner, the Toronto Police Service determined that a new, large-scale facility was required for the G20 Summit.

The members of the Toronto Police Service Planning Team responsible for the PPC (“PPC Planning Team”) were required to design and construct a mass prisoner processing centre in less than four months. The City of Toronto located and leased a vacant film studio at 629 Eastern Avenue in March 2010. The facility then required significant renovations and technical upgrades. The extent of the work meant that the PPC was completed only days before it began operations on June 18, 2010. At the same time, the PPC Planning Team was responsible for designing the prisoner management process at the PPC.

The PPC was a facility without precedent in Ontario and, as a mass detention facility, posed unique operational challenges that required expert planning. However, the members of the PPC Planning Team had no particular experience or expertise in designing a mass prisoner processing facility. While expert advice on the structural and technical aspects of the PPC was sought (e.g. compliance with building codes) available expert advice in relation to prisoner care and management at a mass detention facility was not. Most notably, the PPC Planning Team did not solicit the input of the Ministry of Community Safety and Correctional Services, the provincial ministry responsible for the operation of Ontario’s jails and detention centres as well as the regulation of police services in Ontario. The Ministry was a readily available source of relevant expertise and the PPC Planning Team should have sought this out.

The PPC Planning Team intended that the PPC would operate in same manner as a Toronto Police Service divisional facility. It was designed to process – receive, book, investigate, and release – 500 prisoners within a 24-hour period, but was capable of housing in excess of 1,000 prisoners at one time. The PPC was intended to be a mass prisoner *processing* centre. Those arrested were supposed to be processed and released or transferred to a court facility for a bail hearing. It was not intended to be a *detention* centre where prisoners would be held for extended periods of time, and certainly not more than 24 hours.

The operational plan that governed prisoner care and management at the PPC (“PPC Plan”) was intended to “capture the universe” of the procedures to be followed at the PPC. In an effort to save planning and training time, standard procedures used at Toronto Police Service divisional facilities were incorporated without adaptation. This reliance on standard procedures was problematic. Standard Toronto Police Service procedures are designed to meet the everyday demands of a divisional facility and not the unique demands of mass prisoner processing centre. In particular, they are not designed to facilitate the processing of a large number of prisoners at

one time. In certain instances, the PPC Plan incorporated multiple procedures that would apply to the same situation, making the plan internally inconsistent. Collectively, these shortfalls meant that the PPC Plan provided little more than an overview of the prisoner management process and was not complete or detailed enough to provide guidance to those who would operate the facility.

The Board had almost no involvement in the planning for the PPC. It received an initial report from Chief Blair during a closed Board meeting on January 21, 2010 and was informed that a new prisoner processing facility was required because existing Toronto Police Service facilities were insufficient. Following that meeting, the Board received only informal briefings from Chief Blair and it was not provided with any of the PPC planning materials. Chief Blair made clear during his interview with the Review that, in his opinion, the details of the PPC Plan were “operational in nature” and were not properly a matter for the Board to consider. For its part, the Board took no active steps to obtain any detailed information from Chief Blair. It also failed to undertake a review of its own policies to determine whether they were adequate for the purpose of a facility like the PPC, or whether further policy direction was required. Unfortunately, the Board was satisfied with the general assurance that it would be “business as usual” at the PPC.

It was not “business as usual.” Under the *Police Services Act*, the Board was responsible for the provision of adequate policing facilities in Toronto. The express reason for building the PPC was that existing Toronto Police Service facilities were inadequate. This should have prompted the Board to question why existing facilities were inadequate and how the proposed facility would address those shortcomings. The need for Board oversight was particularly important in relation to the PPC. It was a unique, mass detention facility and the PPC Plan was a new procedure that had not undergone any operational testing. Had the Board engaged in a proper consultation with the Chief, shortfalls in the PPC Plan may have become evident. This may have helped to avoid some of the problems encountered during the G20 Summit.

While Toronto Police Service officers were responsible for the planning process, the PPC was commanded by a Court Services Superintendent (“PPC Incident Commander”) and was operated primarily by Court Services officers. Court Services is the unit within the Toronto Police Service responsible for prisoner care and management, and security at court facilities. Court Services officers follow unit-specific procedures and are not usually familiar with standard procedures followed by police officers.

The short transition from the planning phase to the PPC beginning operations meant that the Court Services officers who were responsible for prisoner care and management received minimal training: an orientation weekend conducted on June 16 and 17 and a series of mock exercises which took place the following week, after the PPC had already begun operations. This meant that the Court Services officers were required to learn a complex operational plan within a matter of days, including numerous standard Toronto Police Service procedures with which they would not have been familiar. This short transition period and the shortfalls in the PPC Plan meant that the Court Services officers had almost no guidance as to how they were to run the PPC. This led the PPC Incident Commander to impose three changes to the prisoner management process at the very last minute: (1) the inclusion of a single pre-booking officer who was responsible for screening every prisoner that arrived at the PPC; (2) the introduction of prisoner tracking systems

in addition to the one already in place; and (3) the division of the PPC into four autonomous zones each under the command of a Court Services Supervisor.

The last-minute changes to the prisoner management process had a significant impact on the effective operation of the PPC and on those who were held at the facility. The inclusion of a single pre-booking officer resulted in a crippling bottleneck at the beginning of the prisoner booking process, which was precisely the situation the PPC was built to avoid. As prisoners were waiting to be screened by the pre-booking officer they were held in pre-booking cells. While in those cells, prisoners were, in effect, being held in procedural “limbo” and were not afforded the same care as prisoners who had been through the booking process and were being held in the main holding cells: they were held in restraints, they were not given access to lawyers or a telephone, there was no record of when they were fed, and young people were not able to contact a parent or guardian. Given the extent of the delays, some prisoners were kept in pre-booking cells for over 24 hours. The combination of multiple tracking systems and the division of the PPC into four zones caused confusion on the part of Court Officers. It also led to an inability to track prisoner information in “real time” effectively and, as a result, additional delays, overcrowding, and a breakdown in prisoner care occurred.

The high incident of Level 3 searches (strip searches) at the PPC merits further investigation by the Board. The Board should require that the Chief of Police’s next quarterly report concerning Level 3 searches address the number of such searches at the PPC and the lack of proper documentation for many of those searches.

Recommendation No. 31: **Early involvement of major event planning specialists and relevant experts**

The Board should create a policy governing circumstances where the Toronto Police Service is required to design and plan for a unique operational requirement, such as the PPC. The Board’s policy should require that the Chief of Police ensure that major event planning specialists and other relevant experts are engaged to assist the Toronto Police Service with the development of operational plans and the design of specific processes associated with the operational plans. The event specialists should have a background and experience in planning for and overseeing large-scale security operations. Experts include relevant government ministries, agencies, and legal advisors. The input of planning specialists and experts should be solicited at the earliest possible opportunity.

Recommendation No. 32: **Complete operational plan**

Where the Toronto Police Service has created an operational plan for a major event, the Board should seek confirmation that the operational plan constitutes a complete document that addresses all potentially applicable policies and procedures. Further, where different units within the Toronto Police Service have different procedures that relate to the same matter, the Board should seek confirmation regarding how the Toronto Police Service has reconciled these different procedures.

Recommendation No. 33: **Procedures concerning mass arrest and detention**

The Board should make a policy that directs the Chief of Police to create an operational plan for a temporary mass prisoner processing centre, if such a facility is required at major events are held in Toronto. The plan should address the design and processes for the facility, including procedures concerning to prisoner care and management.

The Ministry of Community Safety and Correctional Services should be consulted with respect to the development of this operational plan.

Recommendation No. 34: **Board guidance on unique operational requirements**

In situations where the Toronto Police Service must plan for a unique operational requirement, like the PPC, the Board ensure that adequate and complete policy direction is in place. The Board must ensure it is provided with relevant information, including operational information, to enable it to decide if its existing policies are adequate and to engage in an informed consultation with the Chief of Police.

Recommendation No. 35: **Creation of a Board Policy on mass detention**

Mass detention centres to be used at large policing events pose unique policy concerns and operational demands, and bears on the rights of a large number of prisoners. For these reasons, the Board should develop a specific policy pertaining to mass detention that highlights the specific procedural matters the Chief of Police should address in a related Toronto Police Service procedure on mass detention. The Board should also consult with legal and policy advisors to create a policy that is in accordance with current Canadian legal standards.

Recommendation No. 36: **Board to require a report on Level 3 searches conducted during the G20 Summit**

The Board should require that the Chief of Police's next quarterly report address the number of Level 3 searches conducted at the PPC and lack of proper documentation for many of these searches.

After the Board considers this report, it should determine: (i) whether it is necessary to direct the Chief of Police to undertake a review of the procedure governing Level 3 searches; and (ii) whether consultation with the Chief of Police is required concerning the use of Level 3 searches in the context of public demonstrations, and whether further direction to ensure

such searches are conducted only where specific justification for them exists would be necessary.

Recommendation No. 37: Amendment to Board Policy LE-016 – Prisoner Care and Control to ensure compliance with the *Youth Criminal Justice Act*

The Board should amend Board Policy LE-016 – Prisoner Care and Control to provide that where young people may be detained in the same facility as adults specific measures are taken to guarantee compliance with the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

Recommendation No. 38: Amendment to Board Policy LE-016 – Prisoner Care and Control to ensure separation of male, female, transgendered, and transsexual prisoners

The Board should amend Board Policy LE-016 – Prisoner Care and Control to provide that where male, female, transsexual, and transgendered persons are to be detained in the same facility specific measures are taken to separate completely male, female, transsexual, and transgendered prisoners.

NATURE AND SCOPE OF THE REVIEW

Events as large and complex as those that took place during the G20 Summit of world leaders held in Toronto from June 25 to 27, 2010 afford the opportunity to conduct an impartial inquiry to determine, from hindsight, what can be learned from what happened.

The basic purpose of this Review is stated in the fourth paragraph of the preamble in the Review's Terms of Reference:

... the Board believes that it would be beneficial and of assistance to the Board in carrying out its responsibilities pursuant to section 31(1) of the Act to conduct a Review of the role played by the Toronto Police Service in developing and implementing the strategies for policing the G20 to determine whether those strategies were adequate and effective police services and to conduct a Review of the role of the Board with respect to the planning for and policing of the G20.

The first paragraph in the preamble recites that the Board "is responsible, pursuant to section 31(1) of the *Police Services Act*, R.S.O. 1990, c. P.15, for the provision of adequate and effective police services in the City of Toronto."

Accordingly, the basic purpose of this Report is to assist the Board with statements of the facts and recommendations made in response to the subject matters referred to in the Terms of Reference (which are Appendix "A" to this Report) in carrying out its s. 31 (1) mandate as effectively as possible – in short, to ascertain the lessons learned from the G20 Summit and to benefit from them.

In the course of this Report, I make several findings that the Board fell short in carrying out its oversight responsibilities under the *Police Services Act*. The standard that I apply in making these findings is based on the principles of oversight based upon a proper interpretation of the *Police Services Act* as stated particularly in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service*. It is clear from the record that the Board, in many of its decisions, was applying the former "operations" and "policies" distinction that held sway before the *Police Services Act* and it is clear that it acted conscientiously in doing so. All of the "Board should have" criticisms should be understood in the light of this.

It is my intention that the conclusions and recommendations in this Report will strengthen the effectiveness of the Board's performance of its civilian oversight role. The Board and its staff in the past have increasingly shouldered a heavy burden in carrying out their responsibilities. If my recommendations are implemented, this burden will be increased. Likely, this will necessitate the devotion of further resources to support the Board's work.

Finally, I should say something about Terms of Reference that do not appear to have been expressly addressed in this Report. In *Chapter 7 – Training of Police for the G20 Summit*, I explain why I have not dealt with Terms of Reference 9(a) and 9(e). The reports by the Toronto Police Service and the Office of the Independent Police Review Director canvassed issues raised in these Terms of Reference in significant detail.¹ My analysis of the materials that this Review has considered does not contradict the findings of these reports. Therefore, it was appropriate not to duplicate their efforts by responding to those specific Terms of Reference.

The Report does not deal expressly with paragraph 11 in the Terms of Reference, which is concerned with whether the nature of the demonstrations and actions of demonstrators differed from the previous experience of the Toronto Police Service and if it did, the impact, if any, it had on the Toronto Police Service's management of the policing of the G20 Summit. These matters are covered in the Toronto Police Service's *After-Action Review* and the Office of the Independent Police Review Director report.

With respect to paragraph 12(i) in the Terms of Reference, I refer to the recommendation made in *Chapter 8 – Policies and Procedures Concerning Crowd Control and Mass Demonstrations*. With respect to paragraph 12(ii), relating to assisting the Board in assessing its practices respecting the sharing of information during Board briefings by the Toronto Police Service and others, I refer particularly to *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*.

With respect to recommendation paragraph 12(iii), relating to the Board in communicating to the public on whether extraordinary policing measures are being taken as a result of special circumstances, I refer to the recommendations made in *Chapter 10 – The Public Works Protection Act and Ontario Regulation 233/10*. With respect to paragraph 12(iv), I have concluded that no amendment to the *Police Services Act* is required with respect to any of the matters mentioned.

¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011); Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012).

PROCESS FOR THE REVIEW

A. INTRODUCTION

To address the issues and questions in the Terms of Reference, this Review needed to blend elements of legal research, analysis, public participation and information gathering from key sources. Over the course of approximately the last one and a half years, the Review's small team became familiar with the system that governs the municipal police services in Ontario, learned about what happened during Canada's largest security operation, and engaged the public in a process that facilitated its meaningful input into the challenging issues that the G20 Summit brought into focus.

My task was not simple. It required the dedicated participation of a small team who has focused on the work of this Review since it began. It comprised myself, the Reviewer; Ryan Teschner, Review Counsel; and, Kelly Henriques and Mark Hines, Associate Counsel. We were also assisted by articling students, summer law students, law clerks and administrative staff at Heenan Blaikie LLP.

There is not one particular to go about completing an investigation and final report of this nature. While there have been precedents for comprehensive examinations of this kind, each raises unique issues and challenges. Therefore, each also requires innovation and creativity to accomplish the objective in the most effective and efficient manner possible.

This Review was not a public inquiry under *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sched. 6. Accordingly, it did not possess the statutory powers available to an inquiry under that legislation. In particular, it did not have the legal power to compel the production of documents and information or the participation of relevant parties. Instead, it was necessary for the Review to utilize diplomacy to encourage the cooperation of the various law enforcement agencies and other entities that may have had evidence that was relevant to our Terms of Reference. When we approached the various organizations involved in the planning and policing of the G20 Summit, we did not know what our request for cooperation would be met with. Overall, I have been pleased with the participation of these agencies.

Below, I will summarize the key components of the process this Review followed in order to complete its task.

B. PROCEDURAL AND INITIAL MATTERS

i. Creation of the Review's Procedural Guidelines

As I have mentioned, this Review was not a public inquiry. Therefore, it did not begin with an explicit set of basic rules that applied to its process. As an important primary step, the Review created a set of Procedural Guidelines to govern its work and to ensure those who participated in it would be aware of the procedural safeguards available.

The Procedural Guidelines outlined the parameters that would govern each of the Review's major stages: investigation, document identification and production, interviews and consultations. The Procedural Guidelines were put in place to balance the need for an effective and efficient Review process with the importance of ensuring that the Review operated in accordance with the principles of procedural fairness. A copy of the Review's Procedural Guidelines is at Appendix "B."

ii. Analysis of the Terms of Reference

The Board's Terms of Reference were the Review's entire mandate. Therefore, it was important to be clear at the outset as to each of the issues and questions raised. This ensured that each of the stages that followed would aim to obtain information relevant to answering these questions and issues.

The Review team undertook a detailed review of the Terms of Reference to 'unpack' the many specific issues and questions included. In total, over 50 were identified. In addition, the team developed a document which contained 'lines of inquiry' which flowed from the Terms of Reference. These were central questions to which answers were sought early on and which helped build the factual foundation on which my later findings would rest. These 'lines of inquiry' also served as a roadmap for the information gathering phase of the Review.

C. RESEARCH

As with any other undertaking of this scope, a considerable amount of background work was required for the Review.

The Review team undertook extensive research early on. This research covered a wide range of subjects relating to how municipal policing is conducted, regulated and overseen in Ontario. Specifically, this included detailed research regarding the current *Police Services Act*, its associated regulations and its evolution from earlier versions of Ontario policing legislation; the role of the police services board; the difference between matters of policy versus matters of procedure in the policing context; the concept of civilian oversight in the policing context, including international research on this issue; the work of other inquiries arising from particular policing events around the world, and other research relevant to specific Terms of Reference.

Taken together, this research provided valuable context throughout the work of the Review and was essential in assisting me in my analysis.

D. MEETINGS WITH OTHER G20-RELATED INVESTIGATIONS

As of the time the Review was officially launched on September 23, 2010, the Reviewer and Review Counsel met face-to-face or via telephone with those responsible for all other investigations or inquiries arising from the G8 and G20 Summits. In particular, we met with the heads and support staff for the entities conducting the following investigations:

- Office of the Independent Review Director's investigation into policing matters related to the G20 Summit;
- Ombudsman of Ontario's investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act;
- Hon. Roy McMurtry's assessment of the *Public Works Protection Act* (on behalf of the Government of Ontario);
- Ontario's Special Investigations Unit's investigation into the conduct of specific police officers during the G20 Summit; and
- Commission for Public Complaints Against the RCMP's review into RCMP conduct in relation to the G8 and G20 Summits.

In the case of the Office of the Independent Review Director, it was necessary to have multiple meetings due to the increased potential for overlap with the Review, and the desire to delineate areas of responsibility more clearly given that the OIPRD would be examining certain systemic matters associated with the G20 Summit's policing. The OIPRD's G20 Systemic Review Report was released on May 16, 2012.

E. PUBLIC CONSULTATION HEARINGS

The Review was a process established by a public body following a very public event. However, much of its work must, by necessity, be conducted in private. In this context, the public consultation process enabled the Review to conduct some of its work 'in the open' and with full transparency.

On May 12, 2011, the Review announced that it would hold Consultation Hearings open to all members of the public. The public consultation process had a dual purpose: first, to provide a reasonable opportunity for all interested members of the public who were affected or impacted by the events of the G20 Summit to be heard by the Reviewer, and second, to ensure that the Review had fully investigated all aspects of its mandate.

The hearings were held on June 1, 6 and 13, 2011 in three different locations in Toronto (downtown Toronto, Etobicoke, and Scarborough) to ensure members of the public, organizations and other stakeholders would have access to these sessions. Information on the Public Consultation Hearings was provided to the media and broadcast through newspapers, radio, television and the Internet. The Review's media releases relating to Public Consultation Hearings can be found at Appendix "C."

Individuals and organizations who wished to make submissions to the Reviewer were invited to complete a basic form that included background information about the Public Hearing Process and the issue on which the Review was requesting submissions: “What role should civilian oversight play with respect to the policing of major events?” A copy of the submission form can be found at Appendix “D.”

F. DOCUMENT IDENTIFICATION, REQUEST AND PRODUCTION PROCESS

i. Board and Toronto Police Service Documents

Given that the Review’s Terms of Reference related both to the planning and policing of the G20 Summit, it was expected that there would be a considerable amount of documents and records of potential relevance. The Review made an initial request for documents and information from the Board and the Toronto Police Service. The request of the Board was fulfilled expeditiously, and covered all information in the Board’s files regarding the G20 Summit, as well as more general information concerning the Board’s role and function, including its policies, member training materials, and other information.

The Toronto Police Service initially responded to the Review’s request with initial background information related to the Toronto Police Service’s role in the planning and policing of the G20 Summit. The Toronto Police Service also advised that it had an inventory of approximately 100,000 files and documents associated with the G20 Summit. Therefore, from the outset, it was important to develop a system for the identification and collection of relevant documents that would minimize the time spent reviewing information of less significance.

Beginning in February, 2011, Review Counsel and associate counsel held document identification sessions with representatives of the Toronto Police Service’s G20 Summit Disclosure Team.¹ These sessions, which occurred over the course of one and a half months, permitted the Review team to more quickly sift through the Toronto Police Service’s electronic disclosure file and, with the assistance of the officers present, identify and inventory the specific documents that the Review thought necessary to review in more detail. The assistance of the Toronto Police Service’s G20 Disclosure Team throughout this process bears specific mention. At all times, these officers conducted themselves professionally and with a spirit of full cooperation that accommodated the Review’s desire to move expeditiously. These officers were responsive to the Review’s requests and I appreciate their valuable assistance.

¹ Following the G20 Summit, the TPS assigned to a team of officers the responsibility to design and populate an electronic library. This library now stores all of the electronic files that relate to the Toronto Police Service’s planning and the operations of the G20 Summit. These electronic files include various types of Microsoft Word, Excel, and PowerPoint documents. The library also includes imaged e-mails from various members of the Toronto Police Service, audio files, video files, and other items. In total, the library contains close to 100,000 files and documents.

Once the Document Identification Process was complete, the Review had compiled an inventory of approximately 2,500 documents. The Review then prepared a detailed request of the TPS for all of these documents. They were provided in September, 2011.

ii. RCMP documents

The Review also made an initial request for the production of documents from the RCMP on March 1, 2011. In response, the RCMP advised that it would host two informational briefings for the Review. These briefings were held on March 7, 2011 in Ottawa, and on March 18, 2011 in Toronto.

At the briefings, the RCMP provided presentations which covered background information concerning the planning, policing and certain operational matters related to the G8 and G20 Summits, including the roles played by the various policing agencies that participated in the G20 Summit. The Review also held two brief interviews with representatives of the RCMP following these briefings. At this point, the Review still had not been provided with documents in response to its initial request of the RCMP. Additional requests for information and documents from the RCMP were met with a response March 25, 2011 that the RCMP would receive the Review's summary of its facts related to the RCMP's involvement in the G20 Summit and the RCMP would provide its comments on those facts. The Review began preparing this comprehensive summary.

As the Review continued its work, it became even more apparent that obtaining documents from the RCMP was important. On December 9, 2011, the Review wrote the RCMP again and reiterated the importance of it receiving all relevant information that could bear on its Terms of Reference. On December 13, 2011, the RCMP advised the Review that it was then prepared to produce documents. When these documents were made available, the Review quickly initiated a document identification process similar to the one held with the TPS. This process was completed in a much shorter time-frame. The Review ultimately requested and obtained 260 documents from the RCMP following this process.

While I appreciate the cooperation the RCMP ultimately provided to the Review in the production of documents, the stage at which it occurred caused delay in the ultimate completion of this Report.

iii. Joint documents

For completeness, I note that there was a small category of documents that the Review requested and which were jointly held by the City of Toronto, Province of Ontario, Federal Government and RCMP. These documents were not produced on the basis of an assertion of common interest privilege. The Review was not advised which entity or entities within the group were asserting the privilege. I was not empowered by statute to review this assertion of privilege and adjudicate the matter. Therefore, The Review attempted to negotiate a system by which it could view these documents and not reveal their specific content. This request was denied.

The Review's requests for information are located at Appendices "E," "F," and "G."

G. INTERVIEWS

Once the Review had obtained and analyzed the documents produced by the Board and Toronto Police Service, Review Counsel began preparing for interviews of each of the members of the Board, staff to the Board and the Chief of Police.

Review Counsel prepared a detailed set of interview questions based on the Terms of Reference, the lines of inquiry and the specific information contained in the documents that had been produced.

Interviews were conducted of all seven individuals who served on the Board in the lead up to and during the G20 Summit. These interviews generally lasted one full day, and in the case of the Chair of the Board, two full days. A joint interview was also conducted of the Executive Director, Senior Advisor and Counsel to the Board in the course of an afternoon. Finally, the Chief of Police agreed to be interviewed as the representative of the Toronto Police Service, with the understanding that undertakings to obtain information from officers directly involved with aspects of the planning and policing of the G20 Summit would be given where necessary. The Chief's interviews took place over the course of almost five full days, and he had counsel present at his interviews. I thank Mr. Brian Bellmore and Ms. Karen Mitchell, the Chief's counsel, for their cooperation.

Before each interview, Review Counsel prepared a list of subject matters that would be canvassed during the interview. Interviewees were also provided with their own set of Reference Documents which included all documents that could be referred to during the course of their interview. This ensured that interviewees could familiarize or reacquaint themselves with the material in advance of the interview.

The interviews were conducted in the location most convenient to the interviewee. Review Counsel assumed primary responsibility for leading the interview and asking the questions, and I asked additional or follow-up questions from time to time. All interviews were audio recorded, and a typed transcript was prepared following the interview. Each interviewee was given the opportunity to review the transcript of his or her interview and provide Review Counsel with any corrections (e.g. a typographical error) or additions (e.g. to fill in a word that was inaudible on the audio recording), that were then implemented before the transcript was deemed final.

The inability to compel witnesses to give information to the Review meant that, with the Toronto Police Service, the Chief was responsible for providing answers on behalf of the organization even though other officers may have been better placed or more familiar with particular subject matter. The Chief gave undertakings to provide answers where he did not know the answers personally or thought the information would be better obtained from another member of the Toronto Police Service. However, some of the responses provided to these undertakings were general or revealed that not all steps possible were taken to obtain the response required. The Review lacked the power to compel individual officers to provide information where those officers had subject-matter expertise in relation to G20 Summit. This had a limiting effect.

H. CONSULTATIONS WITH EXPERTS

Review Counsel identified two experts whose academic and professional focus was on issues related to the civilian oversight and governance of police.

Professor Michael Kempa is an associate professor in the Department of Criminology at the University of Ottawa. His academic work focuses on emerging trends and developments in policing around the world. In particular, he has analyzed and written on the mechanisms used to govern the police. Review Counsel met with Professor Kempa for an afternoon in Ottawa on September 14, 2011.

Professor Andrew Graham is an adjunct professor at the Queen's University School of Policy Studies. Mr. Graham has over 30 years of government service experience in, among others, the area of correctional services. Mr. Graham's academic work focuses on public sector management, governance, including modern police governance. The Review team met with Professor Graham in Toronto on May 11, 2011.

Both consultative sessions with these experts were audio recorded and a transcript was prepared. I am grateful for both Professor Kempa and Professor Graham for giving their time to provide their valuable insights concerning many of the public policy issues that have arisen in relation to the governance of the police in Ontario and other parts of the world. Their remarks were illuminating and useful.

I. PUBLIC COMMUNICATION AND INFORMATION

It was important for the Review to maintain transparency concerning its progress and for members of the public to have timely access to information about the Review's work.

To assist in keeping the public informed, the Review created a website (www.g20review.ca) that was launched on the same day the Board announced my appointment, September 23, 2010. The website was accessible to all members of the public throughout its mandate. The website served as an information hub to which members of the public could access the Review's Terms of Reference, information about public hearings and recordings of the hearings once completed and updates concerning the Review's progress. Over the course of the Review, the website remained up-to-date and received continuous traffic.

The Review also provided media with information through news releases and status updates. Review Counsel acted as the media spokesperson for the Review, offering interviews and further information at various stages. These news releases and updates are included at Appendix "H."

CHAPTER ONE: THE LEGISLATION THAT GOVERNS THE TORONTO POLICE SERVICES BOARD AND THE TORONTO POLICE SERVICE

A. INTRODUCTION

This Review's Terms of Reference, in both their preamble and the subjects of the particular terms themselves, indicate that law plays a fundamental role in the subject matter of the Review. This explains why this first chapter addresses the legislation that governs the Toronto Police Services Board ("Board") and the Toronto Police Service.

As one would expect, public police services are governed by law. In the case of the Board and the Toronto Police Service, the main legislative authority is the *Police Services Act* R.S.O. 1990, c. P.15, as amended. With respect to the Board, it may usefully be said now that its basic mandate is expressed in the opening words of section 31 (1) of the *Police Services Act* as follows:

A board is responsible for the provision of adequate and effective police services in the municipality [the City of Toronto].....

There is much in the statute, which I will deal with in this report in some detail, that puts flesh on these bare bones, but I emphasize now that these opening words state a basic principle underlying the legislation and I shall, necessarily, make frequent references to it. This principle provides the answer to many questions on whether a particular action or response by a board is warranted and appropriate. Indeed, it is the authority upon which the Board relies as for establishing this Review.

B. THE HISTORY OF LEGISLATION IN ONTARIO ON POLICING IN MUNICIPALITIES¹

A statute's evolution, that is, the changes made to it over the years since its first enactment, can sometimes be a helpful guide to its proper interpretation² and, also, can afford useful perspective and context for appreciating the significance of its policies from time to time. This latter observation has clear application to the changes brought by the *Police Services Act*, S.O. 1990, c. 10. As I shall note, the most extensive changes in Ontario policing legislation were made in 1990 by the *Police Services Act*, S.O. 1990, c. 10, which became R.S.O. 1990, c. P.15 and came into

¹ For the period preceding 1981, see Stenning, *Legal Status of the Police* (A study paper prepared for the Law Reform Commission of Canada (1981) and particularly at pp. 49-55 and 84-85). The changes in the legislation from 1981 to 1990, for present purposes, are not significant.

² R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (2008) at 577-99.

force on December 31, 1990. Two important amendments were made in 1997.³ This statute increased substantially the number of provisions bearing on a board's responsibility for providing police services at the municipal level and, particularly when measured against the lack of guidance in the pre-1990 legislation, should be "interpreted as being remedial and ... given such fair, large and liberal interpretation as best ensures the attainment of its objects."⁴

Having said this, I think it is of some value to describe in broad terms the evolution that led up to the 1990 legislation.

The first general statute for what is now the Province of Ontario that was concerned with the delivery of police services by cities was the *Municipal Institutions Act of Upper Canada*, 1858, c. 99. It provided for the constitution of a "Board of Commissioners of Police" which consisted of "the Mayor, Recorder, and Police Magistrate" (section 374). The latter two members were judicial officers. The Board appointed the members of the police force who held their offices at the pleasure of the Board (section 377) and it was empowered to make "such regulations for the government of the force and for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties" (section 378). Finally, the statute provided that:

The Constables shall obey all the lawful directions and be subject to the government of the Board, and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all duties and responsibilities, which belong by law to Constables duly appointed. (s. 379)

These provisions may be summarized by noting, first, that they provided for a form of civilian government of the police and, second that the mechanisms for the governing were few: the Board appointed the members of the police force; they held their offices at the pleasure of the Board; the Board could make regulations for the government of the force; and the Board was empowered to give lawful directions to the members of the force. This stands in stark contrast to the web of police government mechanisms provided for in the current legislation. I note that in both the 1858 legislation (section 379) and the current legislation (section 42(3)), the legislation expressly recognizes the common law powers and responsibilities of police officers. A common law policing principle is that relating to the operational independence of police officers in certain contexts, a subject of some complexity which has been addressed legislatively in section 31 (4) of the *Police Services Act*. I shall deal with this provision in this chapter.

The legislation was amended in many particular respects between 1858 and present time. The only change I shall note here, before 1990, is that made in 1946 when the sections concerned with municipal police forces were moved from the *Municipal Act*, R.S.O. 1937, to the newly enacted *Police Act*, S.O. 1946, c. 72, sections 6-18. It may be noted that at this time the Board, still named the "Board of Commissions of Police", comprised the head of the council, a judge and a

³ S.O. 1997, c.8, s. 21 (1), which replaced "the provision of police services and for law enforcement and crime prevention" with "the provision of adequate and effective police services," and s. 40 (1), which empowered the Lieutenant Governor in Council to make regulations on "establishing and governing standards concerning the adequacy and effectiveness of police services."

⁴ *Legislation Act*, 2006, S.O. 2006, c. 21, Sch. F.

magistrate or a crown attorney (section 6(2)). The judge and the magistrate or crown attorney were to be designated by the Lieutenant Governor in Council.

I turn now to the description of the current *Police Services Act*.

C. THE CURRENT *POLICE SERVICES ACT*

I shall deal with provisions in the *Police Services Act* that bear, in varying degrees of importance, on this Review's Terms of Reference and shall make general comments on them. I shall then deal with them with more specificity in my responses to the particular issues raised in this Review's Terms of Reference.

Before dealing with several of the provisions in the *Police Services Act* in some detail, I should refer to paragraph 2 of section 1. It reads:

Police services shall be provided throughout Ontario in accordance with the following principles:

.....

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

It could be thought that it should not be necessary to refer to the *Charter* and the *Human Rights Code* because, from their own force, they apply directly to every case in which the facts make them applicable. The purpose of section 1, paragraph 2 is not, however, to provide for the application of these two documents but, rather to remind those acting under the *Police Services Act* of their constant bearing on the performance of their duties. This is critically important because the exercise of so many police powers, for example, those of arrest, detention, search and seizure, and the laying of charges, involve rights that are protected by the *Charter* or the *Human Rights Code*. Accordingly, it is important that the *Police Services Act* should draw attention to these legal protections of fundamental rights that are so highly valued in our society and are at risk of infringement by police action.

i. The responsibilities of boards of police services and of chiefs of police

a. The board's composition

The Board comprises seven members: three members of the municipal council appointed by resolution of the council; one member appointed by resolution of the council, who is neither a member of the council, nor an employee of the municipality; and three persons appointed by the Lieutenant Governor in Council.⁵ The members of the Board shall elect a chair at the Board's first

⁵ *Police Services Act*, R.S.O. 1990, c. P.15, s. 27 (9).

meeting in each year and they may also elect a vice-chair at the first meeting in each year (*Police Services Act*, section 27 (10)).

b. The legislation

The major responsibilities of boards that are relevant to the Review, and the related responsibilities of chiefs of police, are set forth in the following provisions in the *Police Services Act*.

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

- (a) appoint the members of the municipal police force;
- (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

(4) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

(6) The board may, by by-law, make rules for the effective management of the police force.

41. (1) The duties of a chief of police include,

- (a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1);

- (b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;

- (2) The chief of police reports to the board and shall obey its lawful orders and directions.

42. (1) The duties of a police officer include,

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;

- (3) A police officer has the powers and duties ascribed to a constable at common law.

When the Bill that became the *Police Services Act* was before the Legislative Assembly three features of the *Police Services Act* were stressed by the Solicitor General. The *Police Services Act* was intended (1) to provide boards, police officers and chiefs of police with a “clear direction and a more precise definition of their roles and responsibilities”⁶; (2) “to strengthen the role of the police services board”⁷; and (3) it was to bring about “an enhanced level of interaction between the police and the community and to make our police services more reflective of the community they serve”⁸.

The large difference before and after 1990 is that the pre-1990 statute contained little direction on *how* a board was to exercise broadly conferred responsibilities, while the new legislation contains several specific directions to a board on what it may or must do while also, beginning in 1997, providing for its general responsibility in the opening words of section 31 (1) to provide “adequate

⁶ Debates of the Legislative Assembly of Ontario, (20 December 1989) at 1350.

⁷ Debates of the Legislative Assembly of Ontario, (30 April 1990) at 1450.

⁸ Debates of the Legislative Assembly of Ontario, (30 April 1990) at 1450.

and effective police services.”⁹ The “adequate and effective” version emphasized, for the first time, the quantity and quality of the police services that were to be provided.

It may be noted that a general statutory prescription of the *responsibility* of a board was first enacted in 1947 in a provision that read “... the Board shall be responsible for the policing and maintenance of law and order in the municipality ...”¹⁰ and continued with slight variations to the 1997 amendment, which replaced “is responsible for the provisions of police services and for law enforcement and crime prevention in the municipality.”

In a 1992 report of the Ontario Civilian Commission on Police Services (“Commission”) the importance of the “is responsible” provision, regardless of its context, is stressed. “The law gives Boards overall responsibility for policing services in their communities. That is true of the old *Police Act* which was in effect in 1990, as well as in the new *Police Services Act*.”¹¹ The report stresses the important implications of the responsibility burden on the steps a board must take to carry out its oversight duties.

At the beginning of its report the Commission made a somewhat detailed statement on the nature of a Board’s responsibility to the community under the *Police Services Act*:

The people of Ontario must have confidence in the integrity of their police. Police officers occupy a position of trust. They have authority and responsibilities beyond those of a private citizen. When an officer is suspected of serious misconduct, particularly if it potentially involves criminal activity, the allegation reflects on the entire force.

Police officers are engaged in a stressful and sometimes dangerous job. They need the cooperation and support of the public to do that job. To maintain public confidence and support, every police force must be vigilant in maintaining the highest standards of professionalism and honour among its officers.

Police officers are only human. As in every other line of work, some of them on occasion will get into trouble. The test of the integrity of a police force is not that all its officers be perfect, but that when there are allegations of misconduct, they are dealt with quickly, fairly and openly.

The public must be assured that when wrongdoing by an officer is suspected, the case will be investigated swiftly, and, if there is evidence to lay a charge, prosecuted vigorously. There must be no special treatment because the person under investigation wears a badge. Officers must be assured that they will be dealt with fairly and impartially; the rights of the accused must be protected.

Secrecy is inimical to our system of justice. Law enforcement is an important part of that system. It is a matter of public concern how police forces handle criminal and serious

⁹ *Police Services Act* S.O. 1997, c. 8, s. 21(1).

¹⁰ *Police Services Act* S.O. 1947, c.77, s.7.

¹¹ The Ontario Civilian Commission on Police Services *Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force*, (August 1992) at p. 32.

disciplinary matters that involve their own members, who are sworn to serve and protect the public.

Those who are responsible for the quality of policing must be accountable to the public. Our whole system is predicated on accountability. The Chief of Police is responsible for discipline of the force and day-to-day management. The Chief is accountable to the Police Services Board and through the Board to the community.

The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high. It is imperative that Police Services Boards understand their role and are held accountable to the public. Their function is a crucial one; Boards exist to ensure that the policing services provided meet community standards.¹²

In quoting the foregoing, I am not suggesting that the issues to be addressed by this Review are the same as those in the inquiry before the Commission (which were concerned with discipline proceedings against a police officer who had engaged in discreditable conduct and who was allowed to resign from the force on terms very favorable to himself without Board involvement in the case), but the basic principle of the Board's function being "to ensure that the policing services provided meet community standards" is germane. The Commission gave reasons why the matter before it was of such a serious nature that it could not be considered to be within "the day-to-day management responsibilities of the Chief" as the Chair of the Board had said.¹³

There are several provisions in the *Police Services Act*, and in subordinate legislation made under it, that cast considerable light on the meaning and application of "adequate and effective police services." I refer first to section 4 (2) of the *Police Services Act* which provides:

(2) Adequate and effective police services must include, at a minimum, all of the following police services:

1. Crime prevention.
2. Law enforcement.
3. Assistance to victims of crime.
4. Public order maintenance.
5. Emergency response.

This was enacted in 1997 in the same statute that introduced the "adequate and effective" concept into section 31 (1) and which also provided in section 40 that section 135 (1) of the *Police*

¹² The Ontario Civilian Commission on Police Services *Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force*, (August 1992) at p. 4-5.

¹³ The Ontario Civilian Commission on Police Services *Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force*, (August 1992) at p. 34.

Services Act, the provision that enables the Lieutenant Governor in Council to make regulations, was to be amended to include the power to make regulations

- 1.1 establishing and governing standards concerning the adequacy and effectiveness of police services, including prescribing methods for monitoring and evaluating the adequacy and effectiveness of police services against such standards.

This power was exercised in 1999 by the making of O. Reg. 3/99, a regulation entitled “Adequacy and Effectiveness of Police Services.” This regulation is a vital part of the legislative scheme that imposes obligations on, and gives guidance to, a board on the provision of adequate and effective police services. It has direct relevance to many parts of this Review’s Terms of Reference and I shall deal with it in detail later in this report. I note now that the basic subject matters of O. Reg. 3/99 are the subjects of the minimum level of adequate and effective police services provided for in section 4 (2) of the *Police Services Act*, to which I have just referred: (1) crime prevention; (2) law enforcement; (3) assistance to victims to crimes; (4) public order maintenance; and (5) emergency response.

I turn back to sections 31 and 41 of the *Police Services Act*, from which I have quoted the most relevant parts, and make preliminary comments on how their provisions bear on the provision by a board of adequate and effective police services. I need not comment on the powers respecting a board’s responsibility to appoint the members of the police force, section 31 (1)(a), and to “recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account” (section 31 (1)(d)). Obviously they are of great importance in the maintenance of a high quality of police services.

I refer in particular to a board’s responsibilities under section 31 (1)(b) (“generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality”) and 31 (1)(c) (“establish policies for the effective management of the police force”) and the concomitant duties placed on the chief of police by section 41 (1)(a): “administering the police force and overseeing its operations in accordance with the objectives, priorities and policies established by the Board under subsection 31 (1)” and to section 41 (2): “The chief of police reports to the Board and shall obey its lawful orders and directions.”

In the next part of this chapter, I shall consider the bearing of the terms “policy” and “operations” in their bearing on the scope of the Board’s responsibilities and powers.

c. Policy and operations

It is sometimes said, in simple and general terms, that policies are for the Board and operations are for the chief of police and that the two must always be kept separate. Apart from being impossible to apply in its own terms, this statement does not represent what the statute provides. I refer, in particular, to the following provisions in the *Police Services Act*, all of which have been set forth in the preceding part of this chapter: sections 31 (1)(b) and 31 (1)(c). Section 31 (1)(b), together with its reciprocal, section 41 (1)(a), captures the significant feature of the relationship between the Board and the chief of police with respect to the making of policy and its implementation by the chief. The word “consultation” in “after consultation with the chief of police” in section 31

(1)(b) means a form of a dialogue, or discussion, between the Board and the chief of police on the subject of what is required, in the circumstances of the particular situation being dealt with, to provide adequate and effective police services. No doubt “objectives and priorities with respect to police services in the municipality” are central features of the policies that the Board makes in carrying out the general mandate and section 31 (1)(b) requires that the chief of police be involved in the initial stages of policy formulation.

As far as the subject matter of board policies is concerned I accept, of course, that they cannot breach the prohibitions in section 31 (4). They can, however, set out a context or framework within which police operations take place. I agree with the general statement in the Toronto Police Service Board’s Background Material to the Ontario Association of Police Service Board’s Handbook:

Section 31 (4) of the [*Police Services Act*] is intended to prevent direct Board interference in the actual policing function but not to prevent the Board from making decisions governing the structure and environment in which those policing functions occur.

In the course of our consultation meetings with Chief William Blair he said that he agreed with this general statement, among others, that were put to him from Board materials.¹⁴

I also refer to the wording of section 41 (1)(a) of the *Police Services Act*, which provides that the duties of the Chief include “overseeing [the police force’s] operations *in accordance with the objectives, priorities and policies established by the Board* under section 31 (1)” (section 31(1)(b) and (c)). I appreciate that the police force’s “operations” covers a wider area of activity than that covered by operations relating to particular areas of police activity, such as arrests, searches, and the like, but I take it as including them. If this is right, it is some evidence of legislative intent that Board policies may relate to police operations provided that they do not run afoul of the prohibitions in section 31 (4) of the *Police Services Act* – that is, amount to directing the chief with respect to specific operational decisions or with respect to the day-to-day operation of the police force. As I shall note later in this chapter, there are written policies made by the Board and, also, policies recommended by the Ministry of Public Safety and Correctional Affairs, that relate to police operations in the sense that they set forth a framework for them and do not transgress section 31 (4).

I deal directly now with section 31 (4) of the *Police Services Act*, which is specifically concerned with limitations on the power of a board with respect to some aspects of operational matters. First, the key terms in the first part of section 31 (4) are that the Board shall not *direct* the chief of police with respect to *specific* operational decisions. This means that the Board is prohibited from giving

¹⁴ “We have, we helped the Board in the development of policy but it is Board policy and that we are governed by those policies. And I have always thought that my responsibility, the Board sets the objectives and priorities and policies of the police service. They do it in consultation with the Chief but it’s ultimately their responsibility. And then my responsibility is to operationalize their objectives, priorities and policies and to report back to the Board on how I intend to do that. I see the Board’s role as governance. Governance primarily through policy and priority setting but they also have an oversight role. So it’s not simply just a passive role where they hand out policy and leave it at that. I acknowledge and support the Board’s oversight role and so I report to the Board on the achievement of objectives on the orders and procedures that I have enacted in order to operationalize their policy.” Review’s Interview of Chief William Blair (11 November 2011, Toronto) at 17-18.

a direction to the chief which means, essentially, an order, with respect to particular operational decisions. These are for the chief to make.

The second part of section 31 (4) means that a board shall leave matters of a routine (“day-to-day”) nature relating to the operation of the police force to the chief. It is relevant and useful at this point to say that I do not think that the planning for the policing challenges contemplated for the G20 Summit in Toronto in 2010 could reasonably be thought to involve “the day-to-day operation of the police force,” just as the matter of the process relating to police officer’s resignation from the police force considered by the Commission, to which I have already referred and will refer to again because of its particular facts, was not a matter of day-to-day operation of the police force.

In relation to section 31 (4) of the *Police Services Act*, I should also refer to the *Code of Conduct* that governs members of police service boards. It is set forth in Ontario Regulation 421/97 made by the Lieutenant Governor in Council under section 135 (1), paragraph 6.3 of the *Police Services Act*. This regulation provides in section 2:

Board members shall not interfere with the police force’s operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers.

This provision is sometimes referred to interchangeably with section 31 (4) of the *Police Services Act* (see, e.g., paragraphs 70 and 71 of the *Durham Police Services Board* decision, which is referred to later in this chapter), but it can be seen that it is different from this provision. Principally, it imposes its obligation on board members and not on boards, as does section 31 (4).

Section 31 (4) should be read in the light of section 31 (3) which provides, in part, that “no individual member of the board shall give orders or directions to any member of the police force.” Section 2 in the regulation is made on the understanding that Board members cannot, by reason of requirement in section 31 (3), direct or order members of the police force and hence its prohibition is directed at board members “interfering” with “operational decisions and responsibilities or with the day-to-day operation of the police force.”¹⁵

d. The independence of the police force

It is worth noting that section 31 (4) of the *Police Services Act* gives expression to a very important common law principle relating to police independence from political, and other, interference with its law enforcement responsibilities. In *R. v. Campbell*,¹⁶ Binnie J. said for the Supreme Court of Canada in a case concerned with the scope of the powers of the Commissioner of the Royal Canadian Mounted Police:

¹⁵ See the decision of the Ontario Civilian Commission on Police Services *In the Matter of an Inquiry into the Conduct and Performance of Duties of the Barrie Police Services Board*, (12 December 2007). The chair of the board was held to have been in breach of s. 2 by writing a letter of support for a constable of the police service who was in the midst of a disciplinary hearing under the *Police Services Act*.

¹⁶ *R. v. Campbell* [1999] 1 S.C.R. 565 at para 33 [emphasis added].

While for certain purposes the Commissioner of the RCMP reports to the Solicitor General, the Commissioner is not to be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience. As Lord Denning put it in relation to the Commissioner of Police in *R. v. Metropolitan Police Comr., Ex parte Blackburn*, [1968] 1 All E.R. 763 (C.A.), at p. 769:

I have no hesitation, however, in holding that, *like every constable in the land, he [the Commissioner of Police] should be, and is, independent of the executive*. He is not subject to the orders of the Secretary of State, save that under the Police Act 1964 the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; *but in all these things he is not the servant of anyone, save of the law itself*. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.

There is no need here to discuss the full reach of the common law principle of police independence.¹⁷ It is sufficient for present purposes to note that it is reflected in section 31 (4) of the *Police Services Act*, the terms of which speak for themselves, and to ask whether it could apply to the matter of discussions between the Board and the chief of police on operational matters. Section 42 (3) of the *Police Services Act*, referred to briefly above, has a potential bearing on this question. It provides that “[a] police officer has the powers and duties ascribed to a constable at common law.”

At an earlier time, it may have been that there were, or were thought to be, common law limitations on the power of a board to discuss operational matters with the chief of police either before or after the operational events or challenges in question. There is current evidence, to which I shall refer in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*, of such a view being held during the planning stage for the G20 Summit.

¹⁷ For a useful review of the different rationales that have been relied upon to support claims of police independence see Kent Roach, “The Overview: Four Models of Police Government Relations” in *Police and Government Relations Who’s Calling the Shots?*” edited by Margaret E. Beare and Tonita Murray, p. 16, particularly at pp. 22-29, where consideration is given to English and Canadian case law. See also the opinion in *Reference under the Constitutional Questions Act*, [1957] O.R. 28 (C.A.), which included the following passage at pp. 30-31 in the course of an opinion on whether a municipal council had the power to dismiss a chief constable or other police officer appointed by the council without a hearing as provided by the *Police Act* and the regulation made under it: “Again, while members of a police force must obey ‘the lawful direction’ of the board, neither the board nor a municipality not having a board can lawfully give directions to any member of a police force prescribing the duties of his office. Those duties are set forth in s. 45 of the Act as follows: ‘... preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, ... and ... all the duties and responsibilities that belong to constables.’ Those duties are of a public nature and are not owing to the municipality or a board by which a police officer has been appointed.”

As I have observed, until the 1990 changes in the legislation, there was little statutory direction on how boards were to carry out their responsibilities. This lack of statutory direction left much scope for the application of the common law, or what may have been assumed to be, more loosely, “the law.” In his *Legal Status of the Police*, Philip C. Stenning, writing in 1981, noted that the provisions in police legislation at the municipal level at that time were substantially the same as those of its original predecessor, the *Municipal Institutions Act of Upper Canada Act of Upper Canada* of 1858. I noted this at the beginning of this chapter. Stenning went on to observe that this “makes it clear that the common-law office of constable, as modified by these statutory provisions, remains the basis of the legal status of municipal police officers in the province.”¹⁸

The 1990 legislation changed this. As stated above, it was intended to strengthen the role of the police services board and give a more precise definition of its role and responsibilities. The responsibilities of the Board under the *Police Services Act* with respect to determining “after consultation with the chief of police”, objectives and priorities respecting police services in the municipality (section 31 (1)(b)), and establishing policies for the effective management of the police force (section 31 (1)(c)) dovetailed with the Chief’s duty under section 41 (1)(a) to administer “the police force and oversee its operation in accordance with the objectives, priorities, and policies established by the Board under subsection 31 (1)”, are clearly inconsistent with any right on the part of the Chief not to discuss fully with the Board both contemplated and completed police operations. It is assumed, of course, that the discussions relate to “the provision of adequate and effective police services in the municipality.”

Quite apart from the straight-forward effect of applying the sections in the *Police Services Act* in accordance with their clearly expressed terms there are also policy aspects that should be taken into account. The independence principle reflected in section 31 (4) is derived “from the constitutional principle of the rule of law, which stresses the importance of impartially applying the law to all and especially to those who hold state and governmental power.”¹⁹ No such principle applies to consultations between a police services board having the statutory responsibilities to provide adequate and effective police services and the chief of police. Indeed, if it were applied to deprive a board of important information it would have a negative effect on the provision of these services. No doubt one might think of security risks in connection with these consultations. These are addressed by provisions in the *Police Services Act*, which I shall discuss when dealing with civilian oversight in the next chapter.

e. The consultation process – information exchange

It is important to note that neither of the prohibitions in section 31(4) prevent a board discussing *any* matter relating to policing in the municipality with the chief, nor does it prohibit the board from expressing its opinions, or making suggestions, to the chief on any aspect of policing in the municipality. At the heart of this process is the nature and content of the relevant information bearing on the subject at hand and who has it. This is an essential feature of civilian oversight of

¹⁸ Stenning, *Legal Status of the Police* (A study paper prepared for the Law Reform Commission of Canada (1981) at p 85.

¹⁹ Kent Roach, “The Overview: Four Models of Police Government Relations” in *Police and Government Relations Who’s Calling the Shots?* edited by Margaret E. Beare and Tonita Murray, at p. 28.

policing, which I shall discuss in the next chapter. The most important factor is the amount, relevance, and usefulness of the information that is the basis of the dialogue between them.

The relationship between the Board and the chief imposes duties on each of them: on the board to ask the chief questions about past and future situations and events related to policing in the municipality; and on the chief to inform the board on situations and events that the board should know about. Most of the time the chief has the information and the board does not. The board cannot ask questions about the information of which it is unaware. Accordingly the burden is on the chief to take the initiative in ensuring that the board is properly informed about matters – past, present, or future – that fall under the purview of the board’s responsibilities. I shall elaborate upon this in the next chapter.

An early case in the history of the 1990 legislation, to which I have made two earlier references, involved a breakdown in the intended process. It was the subject of an inquiry by the Commission relating to internal investigations of allegations of wrongdoing against members of the Toronto Police Service, including, but not limited to investigations of allegations against Constable Gordon Junger. The basic facts were that Constable Junger had engaged in discreditable conduct (had been living with a prostitute and was engaged with her in the operation of an escort agency) and was allowed to resign from the force under terms very favorable to himself. The Board had little or no knowledge of the process leading up to this.²⁰ The report of the inquiry included the following on the Board’s duty to see that it is properly informed:

The law is clear that the Board cannot usurp or replace the management role of the Chief of Police. However, the Board clearly has overall responsibility for the operation of the force. The Chief reports to the Board and must obey its lawful orders and it is the view of this inquiry panel that a Police Services Board cannot fulfill its responsibilities for monitoring the policies it sets and the performance of the Chief unless it insists on having the necessary information. And there must be an obligation on the Chief to report fully.

The hands-off stance taken by the Metropolitan Toronto Police Services Board in the matter of the resignation of Constable Gordon Junger represents a misunderstanding of its role and a failure to assume its rightful responsibilities.

The Commission then elaborated on the Board’s failure to exercise its authority²¹:

The Police Services Board was limited – by lack of information from the Chief – in what it could do prior to the publicity about the Junger matter. However, once it learned of the matter, the Board should have demanded to see the agreement. It should have asked for legal advice on the implications. It should have contacted counsel for Junger and advised him that the terms were unacceptable to the Board.

²⁰ The Ontario Civilian Commission on Police Services *Report of an Inquiry into administration of Internal Investigations by the Metropolitan Toronto Police Force*, August, 1992, at p. 32.

²¹ The Ontario Civilian Commission on Police Services *Report of an Inquiry into administration of Internal Investigations by the Metropolitan Toronto Police Force*, August, 1992, at pp. 33-34.

The Board did none of that above. It did not ask to see the agreement nor ask for legal advice. It did not demand a full accounting of the circumstances that led to the agreement. When the Ontario Civilian Commission on Police Services expressed concern about the matter early in May of 1990, the reaction of the Board was to appoint a task force. The task force did not come to grips with the fundamental problems.

The view of the Inquiry panel is that the response by the Board was woefully inadequate.

The then Chair of the Metropolitan Toronto Police Services Board, June Rowlands, defended the Board's actions before the Inquiry. She said that the Board was not aware of the agreement when it was signed; the Board was not party to the agreement, could not change it, and considered that it was within the day-to-day management responsibilities of the Chief.

When reports of the Junger resignation appeared in the press and the matter became a public issue, Ms Rowlands discussed it with the Chief. She learned of the agreement, but she did not ask to see it and testified that she felt he clearly did not want to give it to her. She also stated that stricter guidelines on reporting by the Chief were not required.

Ms Rowlands said that the Board generally felt constrained in what information it could receive about disciplinary matters because of its duties as prescribed in legislation and particularly its potential function as an appeal body in disciplinary cases.

The Metropolitan Toronto Police Services Board appears to have boxed itself into a Catch-22 situation. The Chief did not tell the Board more because it did not ask. The Board did not ask because it assumed the Chief would not tell.

In order for the Metropolitan Toronto Police Services Board to know whether its policies had been followed in the Junger matter, and whether the Chief had exercised good judgment, it should have required answers from the Chief.

Since the Board is the employer of the force, on behalf of the public, any resignation agreement with a member of the force should necessarily be subject to its approval. The Chief acts as an agent of the Board in signing an employment-related agreement. Junger's resignation was approved by the Board, but the Board was not advised of the agreement.

(The Commission subsequently said that the Board's concern that it was constrained by its function as an appellate tribunal was misplaced because (1) Junger had already resigned from the force when the matter came to light publicly and there was no appeal forthcoming; and (2) if the Board had learned too much about the case to give the officer an impartial hearing it could refer the appeal to the Commission under the *Police Services Act*.

f. Two helpful decisions

I now refer to two decisions that, respectively, shed light on (1) an important aspect of the nature of a board's policy-making powers and (2) the need for sensitivity in dealing with issues that relate to what are submitted to be infringements on the chief of police's jurisdiction respecting operational decisions.

In *Odhavji Estate v. Woodhouse*²² one of the many issues addressed by the Supreme Court of Canada in a negligence action was whether the Metropolitan Toronto Police Services Board had a duty to take reasonable care to ensure that police officers cooperated with an investigation by the Special Investigations Unit (“SIU”) under section 113 of the *Police Services Act*. The Court held that the Board had no statutory obligation to ensure that police officers cooperate with the SIU. It said that, in addition, the Board’s lack of involvement in the day-to-day conduct of police forces weakened substantially the nexus between the Board and members of the public injured as a consequence of police misconduct. It then said²³:

65 A second factor that distinguishes the Board from the Chief is the absence of a statutory obligation to ensure that members of the police force cooperate with the SIU. As discussed earlier, the express duties of the Chief include ensuring that members of the force comply with s. 113(9) of the *Police Services Act*. Under s. 31(1), the Board is responsible for the provision of adequate and effective police services, but is not under an express obligation to ensure that members of the force carry out their duties in accordance with the *Police Services Act*. *The absence of such an obligation is consistent with the general tenor of s. 31(1), which provides the Board with a broad degree of discretion to determine the policies and procedures that are necessary to provide adequate and effective police services. A few enumerated exceptions aside, the Board is free to determine what objectives to pursue, and what policies to enact in pursuit of those objectives.*

66 It is possible, I concede, that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police services. If there was evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant use of excessive force. *But as a general matter, courts should be loath to interfere with the Board’s broad discretion to determine what objectives and priorities to pursue, or what policies to enact in pursuit of those objectives. Suffice it to say, the Board’s decision not to enact additional policies or training procedures in respect of s. 113(9) does not constitute a breach of its obligation to provide “adequate and effective” police services.*

This confirms the clear general rule that whether or not a board should make a policy on a subject is entirely within its discretion. This is subject to a possible exception where the circumstances of a situation impose a positive obligation on a board to make a policy.

In *Durham (Regional Municipality) Police Services Board v. Durham Regional Police Association*, (2007) 164 L.A.C. (4th) 225, 2007 Carswell Ont. 8831 the Ontario Arbitration Board (P. Knopf, Member) an interest arbitrator was required to determine not whether a particular Board direction contravened section 31 (4) of the *Police Services Act*, but rather, whether a provision in a proposed collective agreement between a police services board and a police association, which provided for certain deployment matters, contravened section 31 (4) of the *Police Services Act* and, as a result, was beyond the jurisdiction of an interest arbitration. In very detailed reasons the arbitrator held that the provision did not contravene section 31 (4). In paragraph 70 she said:

²² *Odhavji Estate v. Woodhouse* [2003] 3 S.C.R. 263.

²³ *Odhavji Estate v. Woodhouse* [2003] 3 S.C.R. 263 at paras 65-66 [emphasis added].

Do these Regulations and the scheme of the *PSA* mean that the parties can no longer bargain over issues of deployment or two-officer cars? In particular, does Regulation 421/97's prohibition against the Board interfering with "operational decisions" and "day-to-day operations" take away its ability to bargain provisions that may *affect* operations, such as Article 19.01 [in the proposed collective agreement]? The answer to this question must be 'no.' Many provisions in a collective agreement *affect* operations. Vacations, overtime, leave of absence, severance, promotions, and shift schedules are clearly within the scope of police sector collective bargaining and directly affect generalized operational matters in terms of budget, planning and even deployment. Policing operations are constantly impacted by normal and vacation schedules, shift premiums, leave provisions and other items that are routinely bargained into collective agreements without raising any jurisdictional concerns. If such items were not within the realm of bargaining in this sector, the right to bargain under s. 119(3) [in Part VIII of the *PSA*, entitled "Labour Relations"] would be a facade. [emphasis added]

In paragraph 71 she said:

Turning to the specifics of the case at hand, does the current Act and Regulations amount to the type of "exclusionary" signal that the Court of Appeal [in *Toronto (Metropolitan) Commission of Police v. Police Association (Metropolitan Toronto)* (1975), O.R. (2d) 65] has said would take deployment or two-officer cars outside of ambit of 'bargainable' working conditions? Board members cannot "direct specific operational decisions," "interfere with the Police force's operation decisions," or "day-to-day operations." A Chief has the explicit authority to establish procedures for when more than one officer must respond to an occurrence or a call for service and to establish procedures which set out the circumstances in which a public order unit may be deployed. Therefore, a Police Board cannot do anything that derogates from these explicit duties of the Chief, either through direct intervention or in collective bargaining. But is a deployment or two-officer contractual provision inconsistent with these regulatory duties or responsibilities that have been assigned to a Chief? Depending on the extent and impact of a provision, or the need for it in a particular Police force, the provision may be inappropriate or unnecessary. But those are issues that go to the relative strengths of the parties' arguments. Submissions to back those arguments can be presented at the bargaining table or during an interest arbitration that deals with the appropriateness of the terms of such a provisions or whether it should remain in the contract. A deployment provision per se does not necessarily derogate from a Chief's ability to respond to day-to-day or operational requirements.

In paragraph 79 she said:

Similarly, while a Board cannot direct the day-to-day operations or take away a Chief's ability to direct operations, a Board still has the power "to establish the policies and procedures that are necessary to provide adequate and effective Police services." See *Odhavji Estate v. Woodhouse*, *supra*. *The legislation must be taken to have created a harmony between a Board's and the Chief's respective responsibilities*. Otherwise, a Board's policies could have no impact on a Police service. The harmony exists because there is an inevitable interface between Board policies and operational decisions. One sees this with the granting of the Board the power to determine objectives and priorities in consultation with the Chief, and yet leaving the Board with the sole power to establish policies for the effective management of the force. The Chief is then charged with the responsibility of administration and oversight "in accordance with the objectives, priorities and policies established by the Board," ss. 31 and 41. [emphasis added]

Finally, in paragraph 82 she said:

[82] However, while the Chief may now have exclusive authority over specific operational decisions, the Board retains the authority to give directions to the Chief and establish Policies for effective management of the Police force. As Justice Laskin advised these parties many years ago [in *Regional Police Association (Durham) v. Durham (Region) Commissioners of Police*, [1982] 2 S.C.R. 709] and has been repeated numerous times since, if there is a legislative or political desire to take away the right to bargain a particular item, this can be achieved through regulation. The *PSA* and its regulations do not contain the specificity necessary to direct that the provisions of Article 19.01 are incompatible with the Board's ability and mandate to negotiate working conditions or the Chief's authority to oversee operations.

An important feature of the reasoning in the foregoing is expressed in the following passages. "Many provisions in a collective agreement *affect* operations. Vacations, overtime, etc. are clearly within the scope of police sector collective bargaining and directly *affect* generalized operational matters, in terms of budget, planning, and even deployment. If such terms were not within the realm of bargaining in this sector, the right to bargain under section 119 (3) would be a façade."²⁴ "... The legislation must be taken to have created a harmony between a Board's and the Chief's responsibilities"²⁵

This approach to interpretation of the legislation with a view to harmonizing the apparently competing powers of a board and the chief appears to have accepted the approach applied by the Courts in reconciling submitted conflicts between federal and provincial legislation under sections 91 and 92 of the *Constitution Act*, 1982 - the application of the "pith and substance" doctrine.²⁶ It is one that can usefully be followed with respect to dealings between a board and its chief as they seek to resolve issues that may arise between them that turn on apparently conflicting legislative provisions in the course of carrying out their respective responsibilities. In this report I shall refer to examples where this approach is reflected.

ii. The Adequacy and Effectiveness Regulation – O. Reg. 3/99

I have earlier referred to section 135 (1) of the *Police Services Act*, which empowers the Lieutenant Governor in Council to make regulations on many different subjects and in varying degrees of generality and detail, and also to section 135 (1), paragraph 1.1, which was enacted in 1997²⁷ and provides that the Lieutenant Governor in Council may make regulations:

1.1 establishing and governing standards concerning the adequacy and effectiveness of police services, including prescribing methods for monitoring and evaluating the adequacy and effectiveness of police services against such standards;

²⁴ *Durham (Regional Municipality) Police Services Board v. Durham Regional Police Association*, (2007) 164 L.A.C. (4th) 225, 2007 Carswell Ont. 8831 at para 70 [emphasis added].

²⁵ *Durham (Regional Municipality) Police Services Board v. Durham Regional Police Association*, (2007) 164 L.A.C. (4th) 225, 2007 Carswell Ont. 8831 at para 79.

²⁶ See Peter Hogg, *Constitutional Law of Canada*, 5th ed., pp. 15-18 and 15-19 and *Bank of Toronto v. Lambe* (1887), 12 App. Cas 575 (P.C.).

²⁷ *Police Services Act* S.O. 1997, c. 8, s. 40 (1).

At the present time thirteen regulations have been made under section 135 (1), paragraph ii. The most relevant one for present purposes is O. Reg. 3/99 entitled “Adequacy and Effectiveness of Police Services.” The subject headings in O. Reg. 3/99 precisely reflect what the *Police Services Act* in section 4 (2) provides what adequate and effective police services must include “at a minimum”:

1. Crime Prevention, in ss. 1-3 of the regulation.
2. Law Enforcement, in ss. 4-16 of the regulation.
3. Victims Assistance, in s. 17 of the regulation.
4. Public order maintenance, in ss. 18-19 of the regulation.
5. Emergency response services, in ss. 20-28 of the regulation.

As will be seen, O. Reg. 3/99 mandates that boards make written policies with respect to specified matters of police services. The organizational order in this regulation involves beginning with provisions that identify subjects with respect to which every chief of police is required to establish “procedures and processes.” Then, in section 29, the regulation requires the Board to establish policies with respect to some of the matters on which the chief of police is required to establish “processes and procedures” and on other matters. Section 29 reads:

29. Every board shall establish policies with respect to the matters referred to in section 3, subsections 4 (3) and 6 (3), section 8, subsection 9 (4), sections 10 to 17, 19, 20, 22, subsection 24 (2) and sections 25 to 28.

I set out in the following table the “matters referred to” in the provisions listed in section 29 with respect to which every board shall establish policies.

<u>O. Reg. 3/99</u>	<u>The Matter Requiring a Policy</u>
Section 3	Problem-oriented policing and crime prevention initiatives
Section 4 (3)	Community patrol which addresses when and where directed patrol is considered necessary and appropriate, based on stated factors
Section 6 (3)	Communications and dispatch services
Section 8	Traffic management, traffic law enforcement and road safety
Section 9 (4)	The designation by a chief of police of a person as a criminal investigator
Section 10	The ensuring by a chief of police that there is supervision available to members of the police force

24 hours a day and other matters related to supervision

Section 11

The preparation by a chief of police of a criminal investigation management plan that includes six stated requirements and several other requirements that relate to such a plan

Section 12

The obligation of a chief of police to develop and maintain procedures and processes relating to undertaking and managing general criminal investigations and investigations into 22 specified matters

Section 13

The establishment by a chief of police of procedures and processes in respect of 14 stipulated matters that include search of the person, arrest, prisoner care and control, prisoner transportation, and on the sharing of crime, call and public disorder analysis data and information on crime trends with its municipal council, school boards, and several others ending with “members of the public in the municipality it serves”

Section 14

The investigation supports referred to in clause 5 (1)(d) of the regulation, the collection, handling, preservation, documentation and analysis of physical evidence, and several other matters

Section 15

The provision of police services in respect of navigable bodies and courses of water

Section 16

Court security

Section 17

Providing assistance to victims of crime

Section 19

Procedures on public order units and related matters

Section 20

Procedures on police action in respect of labour disputes

Section 22

Procedures on preliminary perimeter control and containment and related matters

Section 24 (2)

The qualifications of a member of a containment, tactical unit, and hostage rescue team, and of every major incident commander and crisis negotiator

Section 25

The appropriate knowledge, skills, and abilities of forced entry technicians and explosive disposal technicians and on the services referred to in sections 21 and 22, which contain several detailed provisions relating to tactical units, major incident commanders,

and other specialized positions – and preliminary perimeter control and containment

Section 26

The preparation of an emergency plan for its police force setting out the procedures to be followed during an emergency

Section 27

Procedures on ground search

Section 28

Procedures established by the chief of police that are consistent with any federal or provincial counter terrorism plan designated by the Solicitor General

It may be noted that the requirements that chiefs of police establish “procedures and processes” with respect to the named subjects (sections 3 to 28) precede, in the sequence of sections in the regulation, the requirement that boards make policies that relate to these subjects (section 29). This necessarily requires that the making of “procedures and processes” be deferred until the relevant policies have been made by the Board – or, if a procedure and process has been made before the relevant policy, it may have to be re-made to conform with the policy when it is made. A chief’s procedures and processes must be made in conformity with his or her board’s policies.²⁸

The foregoing clearly shows aspects of board governance in the form of stated policies that bear on, or relate to, police *operations*. It shows that the Lieutenant Governor in Council had the view that, in requiring, in relation to several police operations, boards were fully empowered to make policies “with respect to them.” Further, if there be any doubt about the application of section 29 of O. Reg. 3/99, it should not be read as empowering a board to make policies that would be inconsistent with section 31 (4).

I note that several of the subjects for which boards are required to make policies bear on issues related to this Review. I refer to section 13 (1)(h) (search of the person); p 13 (1)(j) (arrest); section 13 (1)(l) (prisoner care and control); section 13 (1)(m) (prisoner transportation); section 19 (1) (public order unit services); and section 22 (1) (preliminary perimeter control and containment). I note in the Terms of Reference subjects that fall, or could fall, under the foregoing provisions: paragraph 9 (a) dispersal of demonstrators; paragraph 9 (b) detainment and/or arrest people participating in demonstrations; paragraph 9 (c) using the strategy of “kettling”; paragraph 9 (e) using tear gas or some similar substance to disperse people; and paragraph 9 (f) what orders or instructions given with respect to conducting searches without a warrant, and arresting people without a warrant.

²⁸ *Police Services Act*, s. 41 (1)(a).

D. BOARD POLICIES MADE UNDER O. REG. 3/99 AND RELATED MINISTER'S GUIDELINE POLICIES

i. Introduction

I set out below the six Board policies made by the Toronto Police Services Board referred above, in each case immediately followed by a guideline policy made by the Ministry of Public Safety and Correctional Affairs under section 3(2)(j) of the *Police Services Act*, which provides that the Ministry “shall issue ... guidelines respecting policy matters.” These are policies and guidelines that were in existence at the time of the G20 Summit Meeting in June of 2010.

Before commenting directly on these policies, I should make a general statement on the role of the Ministry guideline policies. It appears that they could be more useful to boards that have less research and clerical resources than boards such as the Board. Having said this, it is clearly the duty of a board, after taking into account the particular policing needs of its jurisdiction and having carefully canvassed all of the relevant possibilities, including those suggested in the Ministry guideline policies, to make the policies that it considers to be the most effective for its municipality and not merely to rubberstamp the guideline policies.

These policies are set forth in full simply because they are useful as examples of how the Board has responded to its obligation under the legislation to make policy statements. My brief comments on each Board policy set forth immediately following it and the Ministry Sample Board Policy, relate to their validity and general quality as a statement of policy and do not extend to a critical analysis of the policy.

I repeat that the making of these Board policies is one kind of exception to the *Odhavji* general rule that the Boards have a broad discretion with respect to which policies to make. The making of these policies is mandatory.

The Board policies also serve as examples of what the Board considered to be policies that, although they related to, or had some potential bearing on “specific operational decisions,” with one possible exception they do not amount to directing the chief of police with respect to “specific operational decisions” (section 31 (4) of the *Police Services Act*). (The exception relates to the detail in the Public Order Units policy. I comment on this when dealing with this policy.) They are in the nature of statements that set out “the structure and environment in which policing functions occur” (the Toronto Police Services Board’s Background Material to the Ontario Association of Police Service Board’s Handbook referred to earlier under the heading of “Policy and Operations.”)

My observations on the Board’s policies as reflections of its view of valid exercises of its policy-making powers are equally applicable to the Ministry’s view with respect to the validity of its guideline policies. I also refer back to my earlier reference to the clear implication in section 29 of O. Reg. 3/99 that valid board policies could be made under it notwithstanding that each has some bearing on an operational subject.

ii. Six board policies

Search of Persons

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board that the Chief of Police shall establish procedures and processes regarding search of persons that address: (Section 13(1)(h))

- (a) the compliance by members of the police service with legal and constitutional requirements relating to when and how searches of persons are to be undertaken;
- (b) the circumstances in which an officer may undertake a search of a person;
- (c) frisk/field searches;
- (d) strip/complete searches;
- (e) body cavity searches;
- (f) consent searches;
- (g) the supervision of searches of persons; and
- (h) the documentation of searches of persons.

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to the search of persons that the Chief of Police will:

- (a) establish procedures that address:
 - i) the compliance by members of the police service with the legal, constitutional and case law requirements relating to when and how searches of persons are to be undertaken;
 - ii) the circumstances in which an officer may undertake a search of person;
 - iii) frisk/field searches;
 - iv) strip/complete searches;
 - v) body cavity searches;

- vi) consent searches;
 - vii) the supervision of searches of persons; and
 - viii) the documentation of searches of persons; and
- (b) ensure that officers and other members as appropriate are kept informed of changes in the law relating to the search of persons.

Comments

Paragraph (a) in the Board's policy states that the procedures and processes regarding search of persons should address compliance by the police with legal and constitutional requirements relating to when and how searches of persons are to be undertaken. To comply with the law is not a matter of policy. It is a given, a basic legal premise that precedes the making of a policy. It involves taking into account contextual matters relating to the application of the law. I read this Board policy, which at the outset states that the procedures and processes *shall address* compliance with legal and constitutional requirements, as being in accord with the approach.

I note that the Ministry policy includes "case law requirements." This is not stated in the Board policy, but it is no doubt implicit in it. I think it is better that it be stated expressly because it highlights the importance of keeping abreast of developments in the relevant law. I refer, for example, to the important Supreme Court of Canada decision in *R. v. Golden*, [2001] 3 S.C.R. 679 on strip searches. This particular kind of search, and others, are separately and properly identified in both the Board and Ministry guideline policies.

Arrest

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board with respect to arrest that the Chief of Police shall establish procedures and processes regarding arrest that require the compliance of members of the police service with the legal, constitutional and case law requirements relating to arrest. (Section 13(1)(j))

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to arrest that the Chief of Police will:

- (a) establish procedures on arrest that require the compliance by members of the police service with the legal, constitutional and case law requirements relating to arrest; and
- (b) ensure that officers, and other members as appropriate, are kept informed of changes in the law relating to arrest.

Comments

This Board policy is worded differently from that relating to searches of the person. It appears to require that the procedures and processes regarding arrest should require compliance with the law. As noted above, this states no more than a given. Something more than this is required to make a policy.

One example of what I have in mind is shown in the approach reflected in the preceding policy on searches of the person. Its policy is that the chief of police establish procedures that address different kinds of searches that are identified. There are, also, different kinds of arrests, at least with respect to the factual contexts in which they take place. One kind that is relevant is the mass arrest, a kind that is relevant to this Review. It could have been usefully dealt with in this policy.

Prisoner Care and Control

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board with respect to prisoner care and control that the Chief of Police shall establish procedures and processes regarding prisoner care and control. (Sections 29 and 13(1)(1))

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to prisoner care and control that the Chief of Police will:

- (a) establish procedures and processes for:
 - i) the care and control of prisoners, including effective monitoring; and
 - ii) responding to an escape from police custody;
- (b) ensure that members involved in prisoner care and control have the knowledge, skills and abilities required to perform this function; and
- (c) following an escape or in-custody death, review the procedures, processes and practices of the police service for prisoner care and control and report back to the board.

Comments

The Board's policy is even less instructive than that relating to arrest. It does not comply with the requirements of section 29 of O. Reg. 3/99. In an amendment to this policy dated November 15, 2010, after the G20 Summit, the Board made a new policy that provided substantially more guidance.

Prisoner Transportation

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board that the Chief of Police will establish procedures and processes regarding prisoner transportation that require compliance of police officers and/or court officers with the Service's procedures and processes on prisoner care and control. (Section 13(1)(l)(m))

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to prisoner transportation that the Chief of Police will:

- (a) establish procedures on prisoner transportation that require compliance by police officers/special constables with the police service's procedures on prisoner care and control;
- (b) ensure that police officers/special constables used to escort persons in custody have the knowledge, skills and abilities required to perform this function; and
- (c) ensure that appropriate safety equipment is used/available to police officers/special constables performing this function.

Comments

The Board's policy is no more in compliance with the section 29 mandate than that related to prisoner care and control. The Ministry guideline policy is more helpful.

Public Order Units

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board with respect to the services of public order units that the Chief of Police shall:

- 1. ensure that the police service will provide the services of a public order unit by using Service members, that it shall consist of a unit supervisor and at least four squads of seven officers, including the squad leader for undertaking public order activities; (Section 18(1) and 18(3)(a))
- 2. ensure that public order services are deployed in a reasonable time; (Section 18(3)(b))
- 3. ensure that the established procedures set out the circumstances in which the public order unit services may be deployed; (Section 19(1))

4. develop and maintain a manual on public order unit services that is available to each Service member providing these services; and (Section 19(2))
5. ensure that the members of the public order unit have the appropriate knowledge, skills and abilities to provide the services of the public order unit. Section 19(3))

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to public order maintenance that:

- (a) this Board will contract with the _____ Police Services Board/OPP [Ontario Provincial Police] to provide the services of a public order unit within a reasonable response time; and
- (b) the Chief of Police will establish procedures, in consultation with the Chief of Police who is providing the services of the public order unit, that:
 - i) set out the circumstances in which a public order unit may be deployed;
 - ii) set out the steps for obtaining the services of a public order unit; and
 - iii) address the circumstances and processes for liaising with appropriate officials for the purposes of Sections 63 - 68 of the Criminal Code, regarding unlawful assemblies and riot situations.

It is the policy of the _____ Police Services Board with respect to public order maintenance that:

- (a) the police service will provide access to the services of a public order unit within a reasonable response time by (using its own members, or by entering into an agreement for a combined, regional or cooperative delivery);
- (b) the public order unit will consist of a unit supervisor and, at least, four squads of seven officers, including the squad leader;
- (c) the Chief of Police will establish procedures that:
 - i) set out the circumstances in which a public order unit may be deployed;
 - ii) set out the steps for obtaining the services of a public order unit; and

- iii) address the circumstances and processes for liaising with appropriate officials for the purposes of Sections 63 - 68 of the Criminal Code, regarding unlawful assemblies and riot situations; and
- (d) the Chief of Police will:
 - i) ensure that a manual on the procedures of the unit is made available to all members of the unit;
 - ii) ensure that appropriate equipment, in accordance with the Ministry's designated equipment and facilities list, is used/available to members of the public order unit;
 - iii) develop a selection process for members of the public order unit to ensure that the members have the knowledge, skills and abilities to provide the services of the public order unit; and
 - iv) address the ongoing training of members of the public order unit.

Comments

It is apparent that the first part of the Ministry guideline is not relevant to the Board because it does not normally contract with other boards or the Ontario Provincial Police to provide public order unit services. The second part of the Ministry guideline is relevant to the Toronto Police Service and is more complete than the Board's policy.

With respect to the Board's policy, it might be questioned whether the details respecting the size and number of the squads infringe section 31 (4) of the *Police Services Act*. (I note that the second Ministry sample is drawn in the same terms.)

Preliminary Perimeter Control & Containment

The Toronto Police Board Policy

It is the policy of the Toronto Police Services Board with respect to preliminary perimeter control and containment that the Chief of Police shall:

- 6. establish procedures on preliminary perimeter control and containment that are to be deployed in a reasonable time; (Section 22(1) and 21(5))
- 7. provide these services by using Service members in a containment team, tactical unit or as otherwise required; (Section 22(2))
- 8. develop and establish procedures for police officers, who are not members of a containment team and/or tactical unit and who are deployed in a preliminary perimeter control and containment function, which are in compliance with the Adequacy Standards Regulation; (Section 22(3))

9. ensure that the established procedures set out the circumstances in which preliminary control and containment services will be deployed; (Section 25(2)(a) and
10. develop and maintain a manual on preliminary perimeter control and containment that is available to each Service member providing these services; (Section 25(3))

Ministry Sample Board Policy

Board Policy # _____

It is the policy of the _____ Police Services Board with respect to preliminary perimeter control and containment that:

- (a) containment will be provided by (identify service delivery methods - the police service's patrol officers, a containment team (using its own members, entering into a contract, or by entering into an agreement for a combined, regional or cooperative delivery) or a tactical unit);
- (b) the Chief of Police will establish procedures that address:
 - i) the circumstances in which preliminary perimeter control and containment will be established;
 - ii) operational responsibility for an incident where preliminary perimeter control and containment is being established;
 - iii) the deployment of other emergency response services, including receiving assistance from other agencies;
 - iv) the duties of an officer involved in the establishment of preliminary perimeter control and containment, including compliance with the requirement of section 22(3) of the Adequacy Standards Regulation, pending the deployment of a tactical unit; and
 - v) the training of officers in preliminary perimeter control and containment; and
- (c) the Chief of Police will, if the police service establishes its own containment team, or has officers who are members of a joint containment team, develop and maintain a manual on containment team services that addresses:
 - i) the selection process for members of the team, including ensuring that members who provide this service meet the requirements of the Adequacy Standards Regulation;

- ii) the equipment to be used/available to the members of the team in accordance with the Ministry's designated equipment and facilities list; and
- iii) ongoing (and joint if applicable) training of members of the team.

Comments

There is little on which to comment with respect to the Board's policy relating to this subject other than noting that some of the provisions in the Ministry guidelines would appear to be useful additions to the Board's policy, *e.g.*, paragraph (b)(i), procedures that address the circumstances in which perimeter control and containment will be established; (b)(ii) operational responsibility for an incident where preliminary perimeter control is being established; (b)(iii) the deployment of other emergency response services, including receiving assistance from other agencies; (b)(iv) the duties of an officer involved in the establishment of preliminary perimeter control and containment, including compliance with the requirement of section 22 (3) of the Adequacy Standards Regulation, pending deployment of a tactical unit; and (b)(v) the training of officers in preliminary perimeter control and containment.

iii. Concluding comments

Taking into account that the Board has the responsibility under sections 31 (1)(b) and 31 (1)(c) of the *Police Services Act* to establish policies with respect to police services and the effective management of the police force and that the chief of police has the duty of administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the Board (section 41 (1)(a)), I can appreciate the good sense underlying the policy of section 29 of O. Reg. 3/99 to require a board to make policies with respect to those police services that fall within the minimum requirements of what is "adequate and effective."

I must observe, however, that based on the policies quoted above and others that I have read, this legislative initiative does not appear to be functionally effective. Some of the Board's policies are, in effect, non-policies. They give no context or framework guidelines for the police services processes or procedures. They merely repeat the requirements set out in O. Reg. 3/99 that the chief of police establish processes and procedures on the policing subject as stated in particular sections in the regulation. They measure unfavorably against the Ministry's sample policies.

I noted above that after the G20 Summit the Board amended its policy on Prisoner Care and Control to take it out of the "non-policy" category. On the same date, November 15, 2010, the Board also amended its policies relating to Arrests and Prisoner Transportation. These amendments made no substantive change in either of them.

I cannot with any confidence say what the solution is, or solutions are, to this situation. It may be the result of several factors which are best known to the Board, the police service, and the Ministry of Public Safety and Correctional Services. The most that I can recommend that these parties engage in discussion with a view to devising a way of making section 29 of O. Reg. 3/99

work more effectively than it does now. The ultimate responsibility rests with the government of the province, represented by the Ministry, to take whatever legislative action is necessary.

Recommendation No. 1: Improving the nature and quality of Board policies

The Board, the Chief of Police, and the Ministry of Community Safety and Correctional Services should engage in consultation with a view to devising a method of improving the general nature and quality of Board policies made under O. Reg. 3/99 and otherwise.

I note further, that it is not the standard practice for the police service's procedures and processes to be filed with the Board, whether made in relation to a matter covered by a Board policy, or otherwise. Accordingly, having made the policy, the Board may not see its consequences. The result is clearly inconsistent with the monitoring and oversight responsibilities of a board.

Accordingly, *all* of the police services procedures and processes should be filed with the Board. This will keep the Board informed of important steps taken by the police service that could prompt the Board to consider whether new policies would be useful.

Recommendation No. 2: Filing police service procedures and processes with the Board

All Toronto Police Service procedures and processes should be filed with the Board as a necessary step to strengthen the exercise of its monitoring and oversight responsibilities.

E. BY-LAWS MADE BY THE BOARD UNDER THE *POLICE SERVICES ACT* FOR THE EFFECTIVE MANAGEMENT OF THE POLICE FORCE

Section 31 (6) of the *Police Services Act* provides:

(6) The board may, by by-law, make rules for the effective management of the police force.

This provision has roots that go back to the first general statute for what is now Ontario concerned with the delivery of police services by cities. Section 378 of the *Municipal Institutions Upper Canada Act*, 1858 provided:

The Board shall, from time to time, as they may deem expedient, make such regulations for the government of the Force and for preventing neglect or abuse, and for rendering a force efficient in the discharge of all its duties.

Some of this wording appears to have been borrowed from section 5 of the *Metropolitan Police Act*, 1929, c. 44 in England, which provided that:

.... the said justices [the 'governing' body] may from time to time ... frame such orders and regulations as they shall deem expedient, relative to the general government of the men to be appointed members of the police force under this Act; ... and such other orders and regulations, relative to the said police force, as the said justices shall from time to time deem expedient for preventing neglect or abuse, and for rendering such force efficient in the discharge all of its duties;

Immediately before the enactment of the *Police Services Act* in 1990, which repealed the *Police Act*, R.S.O. 1980, c. 38, section 16 of this latter Act provided:

16. A board may by by-law make regulations not inconsistent with the regulations under section 74 [made by the Lieutenant Governor in Council] for the government of the police force, for preventing neglect or abuse, and for rendering it efficient in the discharge of its duties.

In the 1990 *Police Services Act* in section 31 (6) the Legislature retained this provision in shortened form. The Board has in its possession some one hundred and sixty by-laws on various subjects dating back to 1957.

There appears to be substantial overlap, at least on the face of the two provisions, between the by-law making power under section 31 (6) and that conferred on the Board under section 31 (1)(c) of the *Police Services Act*, which requires the Board to “establish policies for the effective management of the police force.”

The subject matters of the by-laws that have been made cover a wide range: By-laws No. 1 – Retirement Age; By-laws No. 25-29 – paying legal expenses of police officers; By-law No. 48 – Discipline Code definition – Circumstances under which force may be used; and By-law No. 128 Firearms Issues; By-law Nos. 156-159 (and many earlier ones) – Financial By-laws.

In its 2005 Inspection Report the Ministry of Public Safety and Correctional Services relating to the Board²⁹ the Ministry said:

In addition to its policies, the Board has Rules established under Board By-Law 99 that pre-date the exiting legislative and regulatory framework. Several of these Rules are duplicated in the policies developed to comply with the *Adequacy and Effectiveness Regulation* and some Rules are not current. The Board and the Police Service share the responsibility for these Rules and are engaged in a revision process, which will lead to the Rules being rescinded after they are annulled or incorporated into the appropriate Board Policy or Toronto Police Service Procedure.

The Inspection Team was informed that Board staff are developing a consolidated manual that will contain all Board Policies, By-Laws and Protocols. The Inspection Team acknowledges the significant amount of work involved in the process of incorporating the Rules into appropriate policies and procedures, and in the initiative to create a consolidated Board Manual.

²⁹ *Police Services Act* s. 3 (2)(b) of the Minister of Community Safety and Correctional Services is required to “monitor boards and police services to ensure that they comply with prescribed standards of service.”

This undertaking does not presently include an archiving system to record the date and nature of approvals and amendments and facilitate the recall of the Board policy in place on any given date. Amended policy documents did not always bear a clear indication of the date of, and authority for, each approval or revision.

No doubt the respective roles of policies and by-laws should be clarified. When we asked Board Staff, we were informed that the revision process referred to in the quotation was not yet completed, nor had the consolidated manual been developed. It is important to the effectiveness of the Board's policy and law-making responsibilities that these, including the archiving system described in the Ministry report, be completed.

F. THE BOARD: TRAINING OF MEMBERS AND LEGAL ADVICE

i. Training of members

The importance, scope, and complexity of the responsibilities of a police services board to provide adequate and effective police services needs no elaboration and the larger the population of a municipality which has a board, with its associated increase in the number and complexity of policing challenges, the more daunting and time-consuming the challenge is. Newly appointed board members arrive with varying degrees of knowledge and appreciation of what their new responsibilities entail.

Often it is the case that the municipal council members who are appointed to a board have some knowledge of how the board works based on their experience as council members, whereas those who are appointed by the municipality and by the Lieutenant Governor in Council are less likely to know what is involved in the execution of the Board's responsibilities.

The Ontario Association of Chiefs of Police submitted to this Review that the vast majority of members of police service boards do not have "a broad policing background" and that there is a lack of effective training for police service board members. The Association submitted that chiefs of police should not be responsible for training board members and that boards should not be "training themselves on what their legislative authority is." The Association submitted that the Ministry of Community Safety and Correctional Affairs should provide the training.

I take these submissions, combined with the information I have received with respect to the training of the members of the Board, as reflecting the fact that there is great variety in the level of training of board members across the province. This Review has received anecdotal information that in some parts of the province boards rely very heavily on the chief of police for both training and advice. I will return to these submissions.

I should note that of the 169 police service boards in Ontario only fifteen of them, the larger ones, have staffs to serve them. Accordingly, the resources available to boards to furnish training to their members, and for other important purposes, will vary substantially across the province.

The Board's training of new members comprises a half day briefing by the Board's staff, a half day briefing by the chief of police, and reading a briefing book on the Board's governance and oversight roles furnished to them by Board Staff. It is kept up to date on a regular basis. Board

members also attend seminars that are organized by the Ontario Association of Police Services Boards.

I return to the points raised by the Ontario Association of Chiefs of Police. I accept without reservation that chiefs of police should not be responsible for training board members, if this means that they are the only source of the training. For reasons indicated in the last part of this chapter in connection with the Board receiving independent legal advice, whatever training a board receives from the chief of police, it cannot extend to what the board's responsibilities are under the *Police Services Act*. There is, however, much in the way of information and training that a board can and should receive from the chief of police with respect to the responsibilities of and challenges facing the police force. Without this, the Board's training would be seriously incomplete.

I note that section 135 (1) paragraph 6.2 of the *Police Services Act* enables the Lieutenant Governor in Council to make regulations "prescribing courses of training for members of boards and prescribing standards in that connection." To date no regulations have been made under this provision.

There is little more that I can usefully say on the training of police service board members. The challenges that they face, indicated in the first sentence of this section, are such that the maintenance of a high level of training is essential. No doubt on-the-job experience is an important and effective source of training, but if a board member's training consisted only of this, his or her training would be seriously lacking. Many facets of a board member's responsibilities, and the ways of discharging them, are too important to be learned only after the event by on-the-job experience.

Also, quite apart from, and in addition to, whatever training is provided to board members, board members have an individual responsibility to be proactive in taking whatever steps they can to inform themselves about the issues that are likely to face the board and the range of reasonable solutions to these issues. The more a board member knows the more effective he or she will be at meetings and between meetings in asking relevant and practical questions respecting new issues that confront the board. What precedents in the board's history afford useful starting points for deciding on solutions? The chief port of call on this sort of question should be the board's permanent staff (if there is one), which is the repository of information on its institutional history.

ii. Legal advice

I begin with the present arrangement for the provision of legal services to the Board. The Board is advised by a lawyer who is on the staff of the legal department of the City of Toronto. The lawyer also provides services, including the giving of legal advice, to the Toronto Police Service.

Situations can and do arise where the lawyer can be in a conflict of loyalties to the Board, the police service, and the City of Toronto.

The current legal adviser of the Board informed the Review that, generally, if he could, he will provide the same advice to both the Board and the police service. If he could not provide the same advice, he would not and it would appear to be a matter of first comes first served. He would

advise the second comer that he had already advised the other “client.” Generally, his first priority was as counsel to the Board and so, if the police service approached him on the same issue, he would tell it to obtain its advice from some other source. This rarely, if ever, came up.

Matters will arise from time to time where the Board will need legal advice on the nature and scope of its responsibility. The giver of this advice should not be encumbered by the possibility of being in a position of conflict of interest. It is in the public interest that the Board should have its own counsel whose legal services are not available to either the Toronto Police Service or the City of Toronto. There is precedent for this in the Board’s current practice of having independent outside counsel advise and represent it on its labour relations responsibilities.

Recommendation No. 3: Legal counsel to the Board

The Board should have its own counsel whose legal services are not available to either the Toronto Police Service or the City of Toronto.

CHAPTER TWO: CIVILIAN OVERSIGHT IN POLICING

A. INTRODUCTION

In the preceding chapter, I reviewed the most relevant features of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, and associated regulations made under it, which bear upon the responsibilities of the Toronto Police Services Board (“Board”) and the police service. I now consider some practical features of civilian oversight in the context of the *Police Services Act*.

I will highlight and describe the elements of civilian oversight as it relates to the policing of municipalities in Ontario. I will then propose a protocol to guide the consultation process that the *Police Services Act* requires the Board and chief of police to engage in when identifying the priorities and objectives for the police service to achieve and policies for the police service to abide by.

My recommendations are intended to assist the Board and the Toronto Police Service in their consultations to enhance the civilian oversight goals of governance and accountability within the framework of the *Police Services Act*.

B. THE FUNDAMENTAL ROLE OF CIVILIAN OVERSIGHT

i. Effective policing requires public confidence

Sir Robert Peel’s *Principles of Law Enforcement* have been accepted as describing the necessary elements of an ethical and effective police force and emphasizing the necessity of maintaining public confidence in the public police service. The public – that is, those subject to the authority, power, and direction of the police – must have respect for those that perform the policing function. Sir Robert said that:

[t]he ability of the police to perform their duties is *dependent on public approval* of police existence, actions, behaviour and the ability of the police to secure and maintain *public respect*.¹

The importance of Sir Robert’s principles has not faded with the passage of time. Many public inquiries, government investigations, and media stories have reported on police corruption, abuse of power, and ineffective policing. Much has been written on how to improve the policing environment to enhance the mutual respect that must exist between the public and the police. In

¹ Sir Robert Peel, *Principles of Law Enforcement* (1829). New Westminster Police Service, “Sir Robert Peel’s Nine Principles”: <http://www.nwpolice.org/peel.html>, accessed (16 January 2012) [emphasis added].

an era where community policing has become the new model of law enforcement, the need for the police to maintain the public's confidence is more important than it ever has been.

ii. The value of civilian oversight in policing

In the municipal policing context, civilian oversight is the process adopted by the legislature to ensure the public's accepted values and norms will guide their police service. Two critical assumptions underlie this approach: first, that police services require some form of governance and second, that elected officials are not the appropriate individuals to provide that governance. The *Police Services Act* creates a system where non-police steer the police service towards certain objectives, decide how resources will be allocated in attaining those objectives, and establish the policy framework in which those objectives will be achieved.

Effective police governance requires a balancing act between policing needs and other state priorities and values:

Police governance in a democratic society, whether this is understood as the 'constitutional and institutional arrangements for framing and directing the policies of the police' or as 'governmental strategies originating from both inside and outside the state', is ultimately a balancing act, requiring the delicate handling of a number of competing and conflicting objectives.²

Under the *Police Services Act*, police boards are responsible for maintaining this balance between the independence that police require to fulfill their law enforcement function, while, on the other hand, creating an effective policy framework in which specific law enforcement decisions will be made and actions will be taken.

The responsibility of police boards is considerable. The *Police Services Act* has empowered police boards, through their policy-making and resource allocation powers, to shape the way in which policing is done. Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police. Where the police board fulfills these functions, the legitimacy that is so important to policing by consent, rather than coercion, is maintained. An effective governance structure ensures that decisions made and actions taken by the police are reflective of the community's values.

iii. The components of civilian oversight in policing

For the purposes of this report, "civilian oversight" is intended to mean the process by which members of the public who are *not* police officers provide general direction to, and ensure accountability for actions taken by, a police service.

² D. Wood and D. MacAlister, "Accountable, Responsive and Independent: On the Need for Balance in Police Governance," *International Journal of Police Science & Management*, 7(3) (2005) 197-207 at 197.

Civilian oversight acts as a check and balance against the legal powers society has given the police to enforce the law. In so many areas of government and regulatory life, various systems of checks and balances are relied upon to ensure there is a balance between those who make decisions and those who are subject to these decisions. Politicians are subject to a “performance review” by way of democratic elections, regulated businesses must submit to inspections by government officials, and branches of government act to moderate one another using the mechanisms available to them, be it legislation, judicial decisions, or executive decree. Where society confers on a particular entity the power to use force to ensure compliance with the law, the need for a check and balance of that power is particularly vital.

In the policing context, civilian oversight comprises two essential components that work in tandem:

- *The Governance Component*: this represents the authority and responsibility for the development of policies that become the framework within which decisions will be made and actions will be taken by the police service. This is intended to ensure that the police service fulfills its legislated function with due respect to community norms.
- *The Accountability Component*: the process by which actions and activities already carried out by the police service are evaluated to ensure they are consistent with existing policies. This is intended to ensure that decisions which have been taken can be evaluated and addressed in a transparent manner and that lessons learned can be applied to future decisions.

One way to understand each of these components is by reference to when each becomes engaged. *The Governance Component* is a proactive, forward-thinking process in which a civilian oversight body makes policies and decisions for the adequate and effective operation of a police service. While certain policies may be created in response to a particular issue, this policy-making work should be an ongoing process in which civilian oversight bodies are continually engaged. A police board’s collection of policies should create the arena in which all aspects of a police service’s statutory and common law responsibilities are carried out. Put differently, “[a] policy is a deliberate plan of action to guide decisions and achieve rational outcome(s).”³

The Accountability Component is an after-the-fact review process in which particular decisions or acts are examined once they have already occurred. Civilian oversight bodies can examine decisions made or sometimes particular conduct (i.e. when a police board reviews a complaint about a chief of police or deputy chief of police under section 61(8) of the *Police Services Act*) with reference to existing policies and procedures to determine whether adequate and effective policing was in fact delivered.

³ Ontario, Ministry of Community Safety and Correctional Services, Police Quality Assurance Unit, “Civilian Governance of Police Services Boards” at 15 (provided 26 March 2012).

iv. The territory on which the consultative process occurs

As I said in the preceding chapter, the *Police Services Act* requires a municipal police board to consult with the chief of police and then establish objectives, priorities, and policies for the police service. The Ontario Legislature has given specific direction concerning *how* the process of civilian oversight should unfold. In establishing the priorities and objectives, the police board must be mindful of only one very specific and important prohibition: not to direct the chief of police with respect to specific operational decisions (*Police Services Act*, section 31(4)). When determining the scope of the consultation that will unfold between a police board and chief of police, it is important to understand and apply this prohibition correctly.

Historically, the discourse concerning civilian oversight has, to some extent, been preoccupied with fashioning bright lines between the realm of the overseers and the function of the police. This was reflected in concerns about demarcating policy matters from operational matters, the former being traditionally viewed as the realm of the oversight bodies and the latter the sole domain of the police.⁴ Unfortunately, despite the clear wording of the *Police Services Act*, I have found that Board members continue to define their responsibilities in terms of a complete separation between matters of policy and operational matters. The significance of this issue should not be understated. Perhaps in its desire not to be seen as treading on the territory of the chief of police, the Board has, wrongly, limited its consultative mandate such that it has come to view it as improper to engage in a discussion that involves the Board asking questions about, commenting on, or making recommendations concerning operational matters.

As I have said in the preceding chapter, the territory on which the Board engages in consultation with the chief of police is considerably larger than has been understood by the Board and the Toronto Police Service. Once the prohibition in section 31(4) of the *Police Services Act* is properly understood, and what lies outside the prohibition is appreciated, the central question then becomes: given the potential substantive scope of the consultation process between the Board and the chief of police, what processes or procedures should be followed to give this consultation maximum effect?

C. THE NEED FOR A CONSULTATION PROTOCOL

The overall purpose of the consultation between a police board and chief of police is to identify the elements that are required for the police service to deliver adequate and effective policing within the municipality. Sometimes this consultation may take place *after* a particular operation or event is over and takes the form of deconstructing what happened and why. This process can

⁴ Approximately three decades ago, the Royal Commission into Certain Activities of the Royal Canadian Mounted Police (“McDonald Commission”) assessed the role Canada’s national police force played in alleged illegal activities. With respect to distinguishing policy from operations in the policing context, the McDonald Commission warned that in policing, operational matters often raise serious issues of policy that cannot necessarily be kept separate from one another (Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law*, Second Report, vol. 2 (Ottawa: Supply and Services Canada, 1981) at 868). In other words, there is not always a bright line or clean break between policy and operations in the policing context. This idea that no bright line can or should exist has been more recently affirmed by the Report of the Ipperwash Inquiry (Ontario, Report of the Ipperwash Inquiry, *Volume 2: Policy Analysis* (Ontario: Queen’s Printer for Ontario, 2007).

highlight lessons to learn and integrate into future operations. On other occasions, a police board can engage in consultation *before* an operation or event and use the information it obtains during the consultation to provide further specific guidance to the police service by creating policies that will frame the particular operation or event and assist the police service in achieving identified outcomes.

These consultation sessions are the main process through which the police board can assess the adequacy and effectiveness of the policing services which have been or will be provided.

However, even with a correct understanding of the *Police Services Act*, the practical realities of civilian oversight are such that differences of opinion may arise as to what actions by the police board infringe section 31(4) and constitute giving direction with respect to a specific police operation. For example, how prescriptive can the Board actually be in its policies with respect to matters that relate to the care and control of prisoners? To bring this question into clearer focus, suppose the Board were to have created a specific policy concerning the Prisoner Processing Centre that operated during the G20 Summit. In a policy of this kind, what details could the Board have usefully included so as to provide meaningful guidance to the Toronto Police Service without fettering the decision-making power of the chief of police concerning the actual operation of the facility?

In order to elaborate on this point further, below I describe the three elements of a consultation protocol that I propose the Board use in its interactions with the chief of police.

i. First element: information exchange between the Board and the chief of police

As partners in civilian oversight, the police board and the chief of police should appreciate that for each to do their job effectively, it is useful to understand the other's perspective. In fact, Board members made clear to us that when engaging in their policy-making function, it was useful to have the operational perspective on an issue.⁵

As I said in the preceding chapter, the nature of how a police service functions will usually involve the chief of police coming into possession of information that the police board not only does not have, but does not necessarily know exists at all. As a result, it is essential to ensure a mechanism exists for the flow of relevant information between these parties. In the interactions between a police board and chief of police, an *information exchange* must exist that will encourage the sharing of more information, including operational information (I will say more about this below), discussing and debating varying policy approaches, and defining the objectives of both the operation and the applicable policy framework surrounding it.

To ensure that this exchange functions appropriately, the police service must be prepared to share with the police board information which has traditionally been viewed as "operational" and, therefore, off-limits. Some may have thought, wrongly, that because the police board is legislatively

⁵ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 40-1.

prohibited from directing the chief of police with respect to specific police decisions, no information about the operations involved in those decisions should be transmitted to the police board. However, as I have already said in the preceding chapter, a police board's policies necessarily affect the police service's operations. A police board cannot be satisfied that it is properly analyzing a policy issue and developing an appropriate policy if it does not see any material that shows what the situation "on the ground" actually is. In our interview, one Board member put it this way:

I think the reality that emerged was that [the Board's] policy, whenever the more effective it became...the more it was resisted 'well now you're affecting operations and you can't do that.' And, I didn't understand why we created – of course we have an impact in operations, we framed the policy. That had to have an impact on operations, or else what the hell were we doing?⁶

The late Professor John Edwards, in his work for the McDonald Commission, supported the information exchange that I am proposing. In his study, Professor Edwards criticized Prime Minister Trudeau (who made a statement at a press conference about police independence and the Royal Canadian Mounted Police) for compartmentalizing police operations and police policy, arguing that it is wrong to view "knowledge and information as to police methods, police practices, even police targets, as necessarily synonymous with improper interference with the day to day operations of the police."⁷ Without access to relevant information, the police board is cut off from the very thing it requires to execute its statutory function.

Our interviews confirm that Board members would value having access to more operational information as early as possible:

I think there should be more collaboration up front and a better level of and a better ability to get at some of those issues before events transpired that could have been possibly prevented or you know, activities might have been undertaken in a different way, responses might have been different, preparation might have been different and so it's always better to be able to prevent something from occurring.⁸

However, the information exchange does not run in only one direction. It must be reciprocal. Therefore, where a police board is examining an issue that may result in the creation of a new policy, it is important to engage in a dialogue with the chief of police. As I have said, operational decisions are inevitably affected by the policies which frame them:

New policies often reconfigure roles, structures, and incentives, thus changing the array of costs and benefits to implementers, direct beneficiaries, and other stakeholders. As a result, policy implementation is often very difficult. Experience has shown that an

⁶ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 22.

⁷ John Edwards, *Ministerial Responsibility for National Security* (Ottawa: Supply and Services, 1980) at 96-7.

⁸ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 35.

inwardly focused, 'business as usual' approach will fall short of achieving intended results.⁹

A flow of information between the police board and chief of police concerning a policy issue will create an opportunity for the police board to obtain feedback from the chief of police on the policy options the board is considering. This, in turn, will enhance the utility of the policies it creates and ensure that the policies are practical and reflective of the "real world" of policing. Just as the police board becomes more effective in its role where it has operational information that informs its policy-making function, the policies themselves become more relevant and helpful if the police service has an opportunity to comment and provide recommendations on policy options before one is chosen.

Refusing to create and maintain a reciprocal exchange of information could lead to a situation where a police board does not even engage in certain discussions or ask certain questions for fear that it will be told it is treading on operational matters. This "[t]imidity" is what has caused police boards to be seen to be "lame-duck" institutions."¹⁰ This is dangerous. We must avoid an approach to civilian oversight where the objective becomes separating the policy decision from the operational implementation of that decision, as this can open up "'escape hatches' through which policy maker (i.e. the police board) and policy implementers (i.e. the police service) can avoid responsibility."¹¹

As opposed to the usual "linear model" of policy development, where there is a notion of a "divided, dichotomous and linear sequence from policy to implementation,"¹² an information exchange ensures that lines of communication are constantly open between a police board and a chief of police. If and when circumstances change, this allows for continued consultation to occur, relevant information to be disclosed, and both policies and operations to be adjusted to address these changing circumstances.

A representative of the Canadian Civil Liberties Association said during one of the Review's Public Hearings that "policy frameworks are only as good as their implementation."¹³ I agree. An information exchange as part of my proposed consultation protocol will help to ensure that an ongoing evaluation of the policing approach to a particular set of circumstances can occur and appropriate adjustments can be made to maximize the effectiveness of the overall policing approach in those circumstances.

⁹ Rebecca Sutton, "The Policy Process: An Overview," Working Paper 118, Overseas Development Institute (UK) (August 1999) at 3.2, p. 23, citing D.W. Brinkerhoff, "Process Perspectives on Policy Change: Highlighting Implementation," *World Development* (1996) 24(9).

¹⁰ Michael Kempa, "Tracing the Diffusion of Policing Governance Models from the British Isles and Back Again: Some Directions for Democratic Reform in Troubled Times," *Police Practice and Research* (2007), 8(2), 107-123 at 114.

¹¹ Rebecca Sutton, "The Policy Process: An Overview," Working Paper 118, Overseas Development Institute (UK) (August 1999) at 1, p. 9.

¹² Rebecca Sutton, "The Policy Process: An Overview," Working Paper 118, Overseas Development Institute (UK) (August 1999) at 3.1, p. 22.

¹³ Review's Public Hearings, Submission by Graeme Norton, representing the Canadian Civil Liberties Association (1 June 2011, Toronto) at 14.

Recommendation No. 4: Information exchange between the Board and the Toronto Police Service on all subject matters

The Board and the Toronto Police Service should ensure that an open exchange of information on all matters of operations and policy is established and maintained. The purpose of this information exchange is to ensure that both the Board and the Toronto Police Service are aware of the details necessary to engage in consultation concerning Board policies and Toronto Police Service operational mandates.

This exchange must permit a two-way transmission of information between the Board and the Toronto Police Service: the Board is to be made aware of all information relevant to its statutory role to determine “objectives, priorities and policies” for policing in Toronto and the Toronto Police Service is to be made aware of information that may assist it in commenting on policy options the Board is considering. In particular, this information exchange must include the provision to the Board of relevant operational information by the Toronto Police Service before operations actually unfold.

Confidentiality of operational information

It is important to note that there may be circumstances in which the *Police Services Act* will require the exchange of information between the Board and the chief of police to occur in a confidential setting.¹⁴ Certainly, information should not be made public where this may compromise some related matter or event that is yet to unfold. However, the Board must be careful to ensure that the circumstances properly justify the exclusion of the public from the Board’s proceedings.

My recommendation that operational information should be provided to the Board in advance could be resisted on the basis that this type of operational information is sensitive in nature and, if it became known by a third party, could compromise the operation entirely. However, the *Police Services Act* and its regulatory scheme provide important and mandatory statutory safeguards against the possibility that sensitive operational information will be disclosed to a third party:

- section 32 of the *Police Services Act* provides that “[b]efore entering on the duties of office, a member of a board shall take an oath or affirmation of office in the prescribed form”;

¹⁴ *Police Services Act* s. 35(4) prescribes the circumstances in which a police board meeting may be confidential:

The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

- (a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or
- (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

- Ontario Regulation 268/10 – General, section 1, requires all police board members to take an oath in which they swear or affirm that they will discharge their duties as members “faithfully, impartially and according to the *Police Services Act*, any other Act, and any regulation, rule or by-law.”;
- section 35(4) of the *Police Services Act* permits a police board to exclude members of the public from a meeting – essentially, to make that meeting and its contents confidential – if “matters involving public security may be disclosed” and the interest in keeping that information confidential outweighs the virtue of keeping board meetings open to the public; and
- Ontario Regulation 421/97 – Members of Police Services Boards – Code of Conduct, section 4, makes clear that each member “shall keep confidential any information disclosed or discussed at a meeting of the board, or part of a meeting of the board, that was closed to the public.”

This scheme of confidentiality and protection from disclosure to the public of sensitive information applies to the relationship between the police board and the police service. It is one component of the fabric of civilian oversight which helps to facilitate a free exchange of all information – including and, perhaps especially, operational information – between the Board and Toronto Police Service.

The obligation of confidentiality imposed on board members is vital and compliance with it is a legal requirement. Board members should not only conduct themselves in a manner that technically complies with their confidentiality obligation, but should also generally instill a sense of trust between them and the police service when it comes to sharing information. Further, once a member of the Board takes his or her statutorily prescribed oath, there exists a presumption of trust between the police service and the board member and all relevant information must be shared.

ii. Second element: identifying the “critical points”

The consultation protocol that I have described would become overwhelming to its participants and, therefore, ineffective if *every* operational detail were provided by the chief of police to the police board. As such, the question becomes what threshold should be applied above which it is clear that the chief of police should provide information to the police board?

I suggest that a definition of what constitutes a “critical point” in oversight should be developed and applied to guide the Board and the chief of police in determining when operational information should be disclosed to the Board in advance of the operation actually taking place. This definition should be based on the Board’s statutory responsibility to ensure “adequate and effective policing” in the municipality. Therefore, a “critical point” should represent a moment that, depending on the decisions which could be made, will have a direct impact on the adequacy and effectiveness of how police services are delivered.

I recommend that a “critical point” should be defined as a *policing operation, event, or organizationally-significant issue for which advance planning and/or approval at the command level (i.e. by the chief of police or deputy chief of police) is required*. By “organizationally-

significant issue,” I mean an issue that is germane not to a specific division or small sub-set of officers, but that impacts across the police service and involve a wider range of personnel.

Where a “critical point” exists, the chief of police should provide the Board with an operational briefing that outlines the broad contours of the operation/event/issue, highlights the existing Board policies, if any, that may apply, and generally ensures that the Board is informed of what is going to take place. If the Board has knowledge of a “critical point,” it can discharge its important governance role by analyzing the policy framework that may apply to the operation/event/issue and determine whether there exists a vacuum in that policy framework that must be filled.

For example, assume a major operation or event is going to take place in a municipality for which the police service will be required to discharge an important policing and security role. Assume also that the police service could discharge its policing role at this major operation or event more “effective[ly]” – a term that is used to describe the Board’s overarching statutory responsibility under the *Police Services Act* – if additional policies were put in place as a framework to guide the police service’s policing activities during that operation. This example makes clear that by identifying the event as a “critical point” during the planning stages, operational details would be provided in advance and the police board would be in a position to appropriately discharge its governance function. The same approach should apply to organizationally-significant issues that are relevant to the police service as a whole.

While it may be more apparent in what circumstances a specific operation or event amounts to a critical incident, a police board or chief of police may be less certain about when a matter becomes an organizationally-significant issue. To illustrate this type of “critical point,” I turn to a real example.

A case study: the use of TASERS by the Toronto Police Service

The consideration of the use of conducted energy weapons, commonly referred to as TASERS, by officers in the Toronto Police Service was a multi-dimensional matter in which both the Board and Toronto Police Service played important roles. The use of TASERS clearly has an operational component, as it addresses a specific use of force option that can be used by individual officers in the field in their dealings with members of the public. This operational component raises questions about how TASERS will be used, in what circumstances, and according to what procedures or protocols.

The use of TASERS also possesses policy components. A police board must decide whether the allocation of resources for the purchase of TASERS is a priority. The police board must also determine whether this use of force option is one that is necessary to provide adequate and effective police services to the community, how such an option impacts on officer safety, and what guidance it wishes to put in place to ensure that TASERS are used in appropriate circumstances. The use of TASERS is but one example of many where the operational and policy issues engaged are relevant to the police service as a whole and the decisions made will affect officers across the service. On this issue and countless others, it is not realistic for a police board to be faced with making decisions in the absence of operational information that will inform its views.

Beginning in 2004, in response to requests for funding to be allocated to acquire TASERS, the Board engaged in a consultative process with the Toronto Police Service concerning the use of these devices by its officers.¹⁵ This process included the Toronto Police Service providing to the Board drafts of the procedures – operational information – that would apply to the use of TASERS by officers.¹⁶ It is clear that having been provided with these operational details, the Board was in a far better position to engage in its policy-making function and determine what resources should be allocated for this equipment, as well as implement accountability mechanisms that require the Toronto Police Service to provide detailed reports to the Board on the ongoing deployment of TASERS by officers.

Of course, just as the entire consultation protocol would suffer from paralysis if the police service provided every bit of operational detail to the Board, the police service itself would be hampered if the police board were requesting more information than it legitimately required to understand the operation. Seeking information for the sake of making the request is not in keeping with the consultation protocol I propose. When the police board makes a request for more information, it should state clearly how the information will fit into the analysis the board plans to undertake. By identifying the “critical points” that arise – places along the decision-making route that will set the foundation for the more specific action that will be taken – the Board will have a measuring stick it can use to determine when it should seek more specific operational information.

¹⁵ In a very direct way, the Board wrestled with the question of whether the decision to allocate funds for the deployment of TASERS was a policy matter over which it had jurisdiction or an operational matter over which the chief of police retained jurisdiction. In a report from the Board’s legal counsel, the following advice was provided: “The question currently under consideration is not whether the deployment of TASERS is appropriate, but whether the deployment of TASERS at a cost of \$1.1 million in the capital budget is appropriate. Given that the use of the TASERS is not legally required, in my opinion it is a matter for the Board to determine as part of its budgetary responsibilities.” See Toronto Police Services Board Minutes (23 September 2004) (Public Meeting), Item #P328.

¹⁶ See Toronto Police Services Board Minutes (8 March 2005) (Public Meeting), Item #P74. In particular, the Board received a report from Michael Boyd, then Interim Chief of Police, with regard to the deployment of Advanced TASERS. Included in that report was a draft “Advanced TASER User Protocol” that was being considered for incorporation into TPS’ Procedures. See also Toronto Police Services Board Minutes (28 September 2006) (Public Meeting), Item #P281, where the Board was provided with operational details in the form of the Toronto Police Service Procedure now governing the use of TASERS. The Board reviewed and considered this Toronto Police Service Procedure and then discussed with Chief Blair certain details contained in it.

Recommendation No. 5: The Board should create a policy that defines “critical points”

The Board should, in consultation with the Toronto Police Service, draft a policy that defines what will constitute a “critical point” in municipal policing and identifies criteria that will be applied in determining when a “critical point” has arisen. This policy will assist both the Board and the chief of police in determining when operational information should be provided to the Board in advance of the “critical point.”

The Board should consider using the following definition of a “critical point”:

A policing operation, event, or organizationally-significant issue for which advance planning and approval at the Toronto Police Service’s command level is required.

There should be clarity and consistency concerning the types of matters about which more detailed information, including operational information, should be provided to the Board by the Toronto Police Service. This policy should be reviewed by the Board with some frequency after it is established to ensure that it is enabling the Board to identify events and issues for which operational information should be provided in advance.

iii. Third element: the Board should always be able to collaborate in defining the “what” – but not the “how” – of an operation

There is an important distinction that should be made between defining *what* the operation is going to be, versus *how* the operation is going to be executed. With respect to the former decision – the *what* of the operation – the police board has a vital and statutorily-required role to play. The Toronto Police Service should always maintain the autonomy to make and execute the particular decisions during an operation. However, the initial determination of *what* the Toronto Police Service’s objectives and priorities will be for a given operation, event, or organizationally-significant issue is for the Board to ultimately make, after appropriate consultation with the chief of police.

In practice, the Board has taken its section 31(b) responsibility in the *Police Services Act* – to consult with the chief of police and determine the police service’s objectives and priorities – to mean that it should engage in long-term planning and articulate the general priorities and objectives for the Toronto Police Service to achieve in the upcoming several years. This long-term planning process is a useful exercise that should continue, as it helps identify overarching goals for the Toronto Police Service in its service to the community. However, I do not interpret the Board’s statutory mandate to set objectives, priorities, and policies as giving it a role with respect to long-term planning only. Rather, where a critical point arises, the Board’s role to set objectives, priorities, and policies is immediately engaged. I will use two examples to illustrate my point.

First, I give the example of an organizationally-significant issue. If particular neighbourhoods in a municipality were being affected by violent crime, the police board may consult with the chief of police about what is occurring. The police board may then decide that a policing response to these

incidents should be a priority. Once the priority is articulated, the police board may define more specific objectives that it wishes the police service to achieve in addressing this issue, such as, for example, developing anti-violence interventions in partnership with the local community. The board may also create policies that will provide a framework for the decisions the police service will make in selecting from the law enforcement options that are available to address the situation. All of these are elements of the “what” of the operation. However, when it comes to deciding on the tactical response to this criminal activity and then implementing it – the “how” of the operation – the police board has no role to play.

Second, I give the example of a major event or operation, such as a major international sporting event taking place in Toronto. When a major event of this nature is on the horizon, the Board should begin consultations with the chief of police at the earliest possible stage. This consultation should be governed by the protocol I have recommended so that the Board can obtain relevant operational and other information in order to understand details of the major event, determine what legislation and other legal requirements may apply to the policing of the major event, and become familiar with the role other organizations may play in the major event. For example, the Board may decide that the Toronto Police Service should prioritize the policing of the City of Toronto and seek the assistance of other law enforcement bodies to police the areas in which the athletes and other event delegates are housed. Through this consultation and with the benefit of the chief of police’s expertise, the Board can identify the objectives and priorities that the Toronto Police Service is in a position to adequately and effectively achieve.

These two examples demonstrate that only through a consultative process that begins at the very outset can the Board actually fulfill one of its central roles: defining *what* the objective and priorities of the operation, event, or organizationally-significant issue will be.

Once the Board defines the general objectives and priorities of the critical point, the Toronto Police Service can create the operational plans required to conduct the policing mission and achieve the objectives. The Board must remain engaged through the life of this process as well. In particular, the Board should conduct a review of the Toronto Police Service’s operational plans not in respect of their technical elements, but to ensure that:

- they are consistent with the mission or objectives stated by the Board, and
- they have the benefit of an adequate policy framework.

In his consultation with the Review, Professor Michael Kempa used the hypothetical scenario of the police service planning an operation to seize firearms and arrest those in possession of them. In explaining the types of questions a police board could put to a chief of police about the operational planning for an operation of this sort, Professor Kempa stated:

Yes, the role for the [police board] in the framework that we’re describing would be to say ‘can we explain how we ended up with this particular plan? Was anything else considered? What...are the reasons to believe that this plan presented is going to work? Was there any evidence [of a] particular plan being used somewhere else to good effect? Is there something unique about what’s going on in [this] situation that would lead you to believe that this is the best solution or are we simply working on the basis of a hunch here that [we are] going to try this approach and just see what happens which could be

legitimate if [there are] no other options,’ but the point is, it would then be explained [to the police board].¹⁷

In our consultation with Professor Andrew Graham, he discussed the same concept, and put it this way:

Does the board have the right to sit down...in advance and ask the chief, ‘What are we planning? Give us enough detail and information to know so that we are comfortable with where you are going.’ Absolutely...Is the board responsible, should the board do that? Absolutely...[S]ometimes only when that devil in the detail[s] emerges do you understand the full policy implications [...] What it does is it gives [the police board] the responsibility to use that information to identify the policy implications, the performance implications.¹⁸

Again, following the recommended consultation during the operational planning development process ensures that the Board provides the Toronto Police Service with adequate direction concerning the priorities and objectives to achieve and minimizes the potential of policy vacuums that could compromise the mission or objectives that have been defined by the Board. I also suggest that by remaining appropriately engaged in the operational planning process, the Board could also provide *recommendations* to the Toronto Police Service where it believes that a particular aspect of the operational plan is out of synch with applicable legal requirements or community norms and values. These recommendations serve to provide further guidance that stops short of being direction to the chief of police on the specific operational decision to make. Through consultation, the chief of police can understand the Board’s recommendation on a particular matter and then accept or reject the recommendation as the chief of police sees fit. Professor Kempa explained this process as follows:

[T]here’s also, I would argue, an accountability mechanism leading up to the event where the Board would be having that public debate with the chief [of police] as to why or why not he or she is accepting or rejecting all of the board’s or some of the board’s recommendations, right? Now in the end...the chief and command levels of the police have the ability to walk away from every single one of those recommendations.¹⁹

Of course, a consultation between the Board and chief of police that follows an event and includes information about specific operational decisions would not be held in public. I refer to section 35(4)(a) of the *Police Services Act* and O. Reg. 421/97, which have been dealt with earlier in this chapter under the sub-heading “Confidentiality of operational information.”

As I will explain below, after the operation is over the principle of operational responsibility would mean that the chief of police may be held accountable by the police board, on behalf of the public, for the decisions that were made.

¹⁷ Review’s Consultation with Professor Michael Kempa (14 September 2011, Ottawa) at 13.

¹⁸ Review’s Consultation with Professor Andrew Graham (22 June 2011, Toronto) at 44 and 51.

¹⁹ Review’s Consultation with Professor Michael Kempa (14 September 2011, Ottawa) at 8.

Recommendation No. 6:

The Board should determine appropriate objectives, priorities, and policies for major events, operations, and organizationally-significant issues in which the Toronto Police Service will be involved

Where critical points in the policing of Toronto arise, the Board and the Toronto Police Service should apply the consultation protocol and engage in a consultation about the major event/operation or organizationally-significant issue at the earliest possible opportunity. The Board should be provided with relevant operational and other information in order to understand the details of the major event/operation/issue. The Board should then work with the chief of police to identify the mission, objectives, and priorities for the particular event/operation/issue, the achievement of which will result in the provision of adequate and effective policing in Toronto.

Once the mission, objectives, and priorities have been defined, the Toronto Police Service must maintain the autonomy to develop and execute the appropriate operational plans. The Board should conduct a review of the Toronto Police Service's operational plans to ensure that (a) they are consistent with the mission or objectives stated by the Board, (b) they are consistent with applicable Board policies, and (c) that no additional policies are required in order to provide guidance to the Toronto Police Service. Through this review process, the Board may provide recommendations to the Toronto Police Service where it believes that a particular aspect of the operational plan may result in the operational mission, objectives, and priorities not being achieved. The chief of police, however, must remain entirely free to accept or reject the Board's recommendations.

The role of the Board in defining the Toronto Police Service's mission or objectives when a critical point arises and providing recommendations regarding – but not directing – operational matters maintains the balance established in the *Police Services Act* between the proper roles of the Board and the Toronto Police Service. The consultation protocol gives practical effect to the *Police Services Act*'s principle of civilian oversight.

As I have said several times, the consultation protocol described here, while in harmony with the framework and provisions of the *Police Services Act*, is not consistent with the way in which the *Police Services Act* has been generally applied by the Board to date. To succeed, the application of the protocol will require a major change in the understanding and approach of the Board and the chief of police. Participants in civilian oversight must be prepared to engage in consensus building, compromise, conflict resolution, contingency planning, and adaptation. Through the application of the consultation protocol, the governance and accountability so important to policing will be enhanced.

D. THE CONSULTATION PROTOCOL IN PRACTICE

The consultation protocol clarifies the respective roles the Board and chief of police should fulfill in the civilian oversight process. In this section, I will illustrate how the protocol, properly applied, may look in practice.

i. Accountability after the event

In essence, the distinction between *independence* and *responsibility* amounts to whether or not police operations can be probed and evaluated at all. Under the concept of “operational responsibility,”²⁰ all police operations – no matter how close to the core of the policing function they may be – could be evaluated by civilian oversight bodies *after* the particular operation comes to an end.

The concept of “operational responsibility” was described by The Independent Commission on Policing Reform in Northern Ireland (“Patten Commission”) as follows:

[I]t is the Chief Constable’s right and duty to take operational decisions, and...neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable’s conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case...*We recommend that the Chief Constable should be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control.*²¹

In his discussion of the Patten Commission’s work, Professor Michael Kempa²² elaborated on the connection between operational responsibility and the role of Policing Boards, as they are known in Northern Ireland:

With respect to becoming the dominant institution for governing the public police, the Board was to be given extensive powers to request reports of the Chief Constable into any aspect of police operations...Thus, Patten had attempted to cut through the ‘Gordian knot’ of the operational independence construct, through substituting the conception of ‘operational responsibility’ wherein the public police would be charged with independently undertaking operational matters but would clearly be responsible for accounting for all operational decisions after the fact.²³

²⁰ This term was used by The Independent Commission on Policing Reform in Northern Ireland (“Patten Commission”), which was established as a result of the 1998 “Belfast Agreement” or “Good Friday Agreement.” The Patten Commission was asked to make recommendations concerning changes in the way policing and governance of policing would be carried out in Northern Ireland. See The Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland* (September 1999) at 6.19 to 6.23.

²¹ The Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland* (September 1999) at 33 (6.21) [emphasis added].

²² Professor Kempa is an associate professor in the Department of Criminology at the University of Ottawa. Professor Kempa’s work focuses on emerging trends and developments in policing around the world, including with respect to the mechanisms used to govern the police. Professor Kempa’s academic teaching and writing also concerns the areas of global trends in political economy, public policy and institutional responses to the practical design and implementation of programs for public and private sector agency reform. Professor Kempa was one of the experts with whom the Review consulted on issues of police governance and civilian oversight.

²³ Michael Kempa, “Tracing the Diffusion of Policing Governance Models from the British Isles and Back Again: Some Directions for Democratic Reform in Troubled Times,” *Police Practice and Research* (2007), 8(2), 107-123 at 116 [emphasis added].

Ultimately, the legislators in Northern Ireland rejected the idea of operational responsibility as proposed by the Patten Commission.²⁴ However, what we usefully learn from the concept is that no one individual or entity – including a chief of police – should have the discretion to determine what information is or is not relevant to a police board. The Patten Commission’s recommendation of operational responsibility, which states that a police board is provided with operational information after the event is over, will certainly lead to enhanced *accountability* concerning how police operations were conducted.

After the police have acted and the operation is over, the police board is able to consult with the chief of police and ask questions about why a certain operational decision or activity was or was not taken. In applying this principle of retrospective accountability after an operation is over, a police board could seek *reports* from the chief of police, initiate *reviews* into particular policing matters that arise from a specific operation that has taken place, and engage in a process with the chief of police to *identify priorities and objectives* for future operations of a similar nature.

Within the context of a consultation that takes place after a particular operation or policing activity, there are typical issues and/or questions that a police board may wish to raise or discuss with the chief of police, such as:

- Was the operation or activity executed according to plans that were made in advance and, if not, why did any deviations occur?
- Did the police service have sufficient time to plan for the operation or activity?
- Did the police board policies that were applicable to the operation or activity provide sufficient guidance and maximize the achievement of the articulated goals?
- Is there any indication that a police board policy that applied to the operation or activity was not complied with and, if so, what details are there concerning any non-compliance?
- Did the police service have sufficient resources to effectively execute the operation or activity and, if not, why were these resources not acquired?
- Are there any indications that a police service procedure that applied to the operation or activity was not complied with and, if so, do any policies to which the procedure relates require amendment?

This list of after-the-event accountability questions or issues is not exhaustive. It does illustrate that within the four corners of the *Police Services Act*, the police board has a meaningful role to play when engaging in consultation as envisioned by the protocol I have proposed. Through consultation with the chief of police, valuable lessons can be learned and applied to future operations and activities of a similar nature.

²⁴ While many of the reforms suggested by the Patten Commission were embodied in the *Police (Northern Ireland) Act 2000*, the recommendation to move to an operational responsibility model of police governance that was to place police boards at the forefront was ultimately rejected: see Michael Kempa, “Tracing the Diffusion of Policing Governance Models from the British Isles and Back Again: Some Directions for Democratic Reform in Troubled Times,” *Police Practice and Research* (2007), 8(2), 107-123 at 117.

ii. Governance in advance of the event

The *Police Services Act* ensures that operational responsibility also exists when *governance* decisions are being made in advance of a particular police operation. The concept of operational responsibility recommended by the Patten Commission was restricted to police operations or police activities after they are over. It was not intended to enable a police board to look at the operation or activities *in advance* so that it may examine whether, for example, there is an adequate policy framework in which that operation will be carried out or so that it may engage in consultation with the chief of police to ensure that any policy vacuum is filled. In Ontario, section 31(1)(b) of the *Police Services Act* clearly provides for consultation being held both before and after the event.²⁵

If operational details are provided only after the operation is over, the police board will be missing the information it requires to execute its statutory responsibility for governance. During his consultation with the Review, Professor Andrew Graham²⁶ drew an analogy between police boards and corporate boards with respect to the importance of possessing and understanding operational information:

[S]o how do you measure and quantify or qualify even how much you should know [as a police board member]? Indeed, you should know the business. I mean, one of the criticisms on the corporate side of governance [is a] failure [of the corporate board] to develop an understanding of the business that you are providing oversight to.²⁷

During our interviews, Board members agreed that obtaining and understanding operational information made them more effective policy-makers because it provided them with the necessary foundation to ask appropriate questions, request further information, and generally understand the dimensions of the particular issue in front of them. As one Board member put it:

[T]he questions you ask [are] only as good as the information you have in front of you and if you don't have the information, you don't know what questions to ask. And that's always been the struggle.²⁸

Certainly, a police board's ability to develop useful policies or to ensure effective operations requires sharing information *in advance* of the operation. Sharing operational information in advance encourages the type of consultation between a police board and the chief of police which maximizes the likelihood that the most appropriate policies can be enacted and the most effective operations can be conducted.

²⁵ See also the reciprocal provision respecting the role of the chief of police in section 41(1)(a) of the *Police Services Act*.

²⁶ Andrew Graham is an adjunct professor at the Queen's University School of Policy Studies. Mr. Graham researches, teaches and writes on public sector management, governance (including modern police governance), financial management and integrated risk management. Mr. Graham has over 30 years of government service experience, including as an Assistant Deputy Minister for 14 years in the federal government and as Senior Deputy Commissioner of the Correctional Service of Canada.

²⁷ Review's Consultation with Professor Andrew Graham (22 June 2011, Toronto) at 25.

²⁸ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 51.

What should a police board do with the operational information it is provided in advance of the actual operation taking place? There are many important oversight activities in which a police board can usefully engage before a particular operation takes place or policing activities are undertaken that will strengthen the governance framework surrounding that operation or activity. After a police board has the relevant operational information in advance of the operation or activity, it could:

- analyze its catalogue of policies in relation to the operation or activity detailed by the chief of police to evaluate whether existing policies provide sufficient guidance or whether policy modifications are required to help achieve identified objectives;
- conduct risk assessment analyses to determine whether there are particular issues that could compromise the successful achievement of objectives by the police service;
- evaluate whether the resources required for the operation or activity are adequate or whether additional resources need to be secured;
- ask the chief of police questions that probe the adequacy and effectiveness of the intended plan for the operation or activity; and
- ask whether contingency plans have been created to manage emergency situations that may arise and which could compromise the original plan that has been put in place.

This list of governance activities in which the police board can engage is also not exhaustive. However, what the list illustrates is that where the chief of police provides operational information to the police board in advance of the operation, the board's ability to discharge its governance function is maximized. Without this information, the board would be acting on the basis of guess work or, perhaps worse, not acting at all.

Of course, throughout the exercise of its governance function, a police board must remain mindful of the critical difference between asking for information, making observations, or proposing recommendations as opposed to providing direction to the chief of police with respect to a specific operational decision, which is prohibited.

Based on the foregoing discussion, I would define the concept of operational responsibility for the purposes of the *Police Services Act* to encompass *the police service sharing operational information with the police board both in advance of and after the operation, thereby enabling the police board to engage in prospective governance and retrospective accountability.*

No amendment to the *Police Services Act* is required for this concept of operational responsibility to take hold. Rather, it flows from a proper application of the *Police Services Act* and the consultation protocol that I have proposed.

E. CONCLUSION

Civilian oversight of our police is essential. Effective civilian oversight ensures that the community's voice will be given proper consideration when decisions on the objectives, priorities, and policies underlying the provision of adequate and effective police services are being made. It

also ensures that when a police service may go wrong, it is held to account by the constituency with the greatest stake in righting that wrong. In other words, civilian oversight is *the* way we ensure that the public and police remain partners in the preservation of public safety.

In this chapter, I have recommended that the Board use a consultation protocol to develop the objectives, priorities, and policies of the Toronto Police Service and to measure the adequacy and effectiveness of the police services delivered. The three elements of the protocol – (i) the existence of an information exchange, (ii) the creation of a definition of “critical point,” and (iii) a Board engaged in defining the objectives, priorities, and policies applicable to specific operations, events, and organizationally-significant issues – combine to ensure that the Board can discharge its governance and accountability responsibilities effectively.

This protocol respects the requirements of the *Police Services Act* while giving effect to the type of information-sharing and collaboration that are fundamental to proper governance and accountability systems. As I have said, this protocol does not require any amendment to the *Police Services Act*, but instead requires a mutual commitment on the part of the Board and the Toronto Police Service to engage with one another as true partners in the delivery of policing services in Toronto.

Having explained the protocol, I intend in the remainder of this Report to apply it, where relevant, to the Terms of Reference. I recognize that a bare account that simply states what was and was not done in relation to the planning and policing of the G20 Summit serves little purpose. Instead, relying on the recommendation-making power set out in the Terms of Reference, I intend to identify particular issues during the planning phases for the G20 Summit and explain how the application of the consultation protocol could have enhanced the governance framework for the G20 Summit and potentially impacted on the unfolding of certain events.

CHAPTER THREE: THE PLANNING AND POLICING FRAMEWORK FOR THE G20 SUMMIT

INTRODUCTION

The Group of Twenty Summit held in Toronto on June 26 and 27, 2010 (“G20 Summit” or “Summit”) was the largest security event in Canadian history.¹ Police and security services from across Canada and the world worked together to establish an environment for world leaders to convene and discuss pressing economic issues. The event required planning, cooperation and coordination between jurisdictions, both inside and outside of Canada, on an unprecedented scale.

Although the Toronto Police Service was not the ‘lead’ policing agency for the G20 Summit, clearly it was at the centre of the operation. With legal responsibility for policing in the City of Toronto, the Toronto Police Service was central to the security plans and policing required for the G20 Summit.

The G20 Summit in Toronto was unique when compared to previous summits held by the leaders of 19 countries and the European Union. This was the first time that the Group of Eight Summit (“G8 Summit”) would be followed immediately by a G20 Summit.² The G8 Summit was announced in June 2008 and was to take place in Muskoka, Ontario on June 25-26, 2010. The G8 leaders would then travel to Toronto and be joined by the remaining members of the G20 to meet for another two days. Thousands of people, including the world leaders and their delegations, government officials, policing, and security officials, and the many other groups and individuals responsible for logistics and operations, would play some role in the two events. Media from around the world would also be in Muskoka and Toronto, analyzing announcements and projecting images from the G8 and G20 Summits to hundreds of countries through newspapers, television, radio and the Internet.

An international event the scope of the G20 Summit requires significant advance preparation. The policing required for this event was the product of intensive discussions, assumptions and planning, which culminated in various decisions that were to be put into operation during the days of the Summit.

¹ The membership of the G20 is comprised of the following countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, United Kingdom, United States and European Union. The other G20 participants are: the International Monetary Fund, the World Bank, the International Monetary and Finance Committee (ex officio) and the Development Committee of the International Monetary Fund and World Bank (ex officio). See the *G20 Information Centre*: <http://www.g20.utoronto.ca/>.

² The membership of the G8 is comprised of the following countries: Canada, France, Germany, Italy, Japan, Russia, United Kingdom and United States.

The planning by police for the G20 Summit and, in particular, by the Toronto Police Service, is the focus of this chapter. Specifically, this chapter addresses the following two Terms of Reference:

1. (a) A review of whether or not after Toronto was selected as the location for the G20, the Toronto Police Service had sufficient time to adequately develop a framework and plan the strategy for policing the G20 and to provide adequate information to the Board [Toronto Police Services Board] so that the Board had sufficient time to discharge its responsibilities pursuant to the Act, and
1. (b) A review of the role that the Toronto Police Service played in developing the framework and plan for policing the G20.

To answer these Terms of Reference, I will explore the timeline leading up to the Summit and analyze how the amount of time available to the Toronto Police Service affected the planning it undertook for the event. I will also examine in detail the role that the Toronto Police Service played in developing plans for the Summit in relation to the other Canadian policing and security partners that were involved in this process.

This chapter is divided into two parts. In the first part, I review the steps which ultimately led to the decision to hold a G20 Summit in Toronto. I will then explore how this and related decisions affected the amount of time available to the Toronto Police Service to plan its operations for the event itself and the challenges this timeline created.

In the second part, I set out the legal framework that is potentially applicable to the policing of intergovernmental conferences in Canada, explain the decision made with respect to how this framework would be applied to the G20 Summit, and explore the impact this decision had on the Toronto Police Service in particular. I also describe the multi-partner police planning entity that became responsible for the security plans for the G20 Summit and explain the Toronto Police Service's specific role in that entity. Finally, I will detail the role that the Toronto Police Service played in developing plans and the policing framework for the Summit.

Although I shall make some comments in this chapter concerning the involvement of the Toronto Police Services Board ("Board") in the planning stages, a detailed analysis of its role and oversight during the lead-up to the G20 Summit will be discussed in *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*.

PART I THE TORONTO POLICE SERVICE'S PLANNING FOR THE G20 SUMMIT

A. TWO INTERNATIONAL SUMMITS

i. The G8 Summit

In June 2008, Prime Minister Stephen Harper announced that Canada would host the G8 Summit in Muskoka, Ontario in June 2010. The preparation and planning for the G8 Summit began almost immediately, leaving the police and security forces involved two full years to get ready for the international summit.

At that time, except possibly by the federal government, there was no G20 Summit contemplated. Typically, the amount of time a host city is given to plan for a G8 or G20 Summit is approximately two years.³

ii. A second summit

As the planning for the G8 Summit was unfolding, a decision was made by the federal government to host a second summit immediately following the one in Muskoka. Together with Lee Myung-bak, the President of South Korea, Prime Minister Stephen Harper announced on September 25, 2009 that Canada would host a G20 Summit in addition to the G8 Summit.⁴ This was a first for international summits. As the Royal Canadian Mounted Police (“RCMP”) indicated in a briefing delivered to the Review and others, “[c]ombining G8, G20 and the North American Leaders’ Summits is unprecedented and would be the largest major event security endeavor undertaken in the history of Canada.”⁵

In October or November 2009, active consideration was being given to where a G20 Summit could be held in Ontario.⁶ At that point, the Toronto Police Service was merely advised that the federal government was examining possible locations. Although not specifically confirmed to the Toronto Police Service, it expected that Toronto was probably one of the options, as it was “one of the very few locations that could accommodate such an event in Ontario.”⁷

iii. No consultation in decision-making

The decision to hold a G20 Summit immediately following the G8 was significant. Therefore, one might expect that the many parties affected by the decision would have been consulted in advance. However, this was not the case. My information makes clear that before the federal government announced that Canada, and in particular, Toronto, would host a G20 Summit in June 2010, there was no meaningful consultation with the Toronto Police Service. No one within the Toronto Police Service, including Chief Blair, or within the Board was engaged by the federal government in a discussion about Toronto being the host city for the event.⁸ As Chief Blair put it in one of his interviews with the Review:

[B]ut I saw then and I see now that that decision [where the G20 Summit would take place] is primarily one to be made at a different level, [because there are] not just

³ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 6.

⁴ See “PM announces Canada to host G20 leaders in 2010” (25 September 2009), available: <http://pm.gc.ca/eng/media.asp?id=2849>.

⁵ “Meeting with the Office of the Independent Review Director and Toronto Police Services Board Review” – PowerPoint Presentation (7 March 2011) at slide 13.

⁶ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 80.

⁷ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 59.

⁸ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 62; Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 99-100.

policing concerns but...there are political considerations and considerations of security not necessarily the responsibility of the [Toronto Police Service].⁹

The decision to host an international summit rests with the federal government. Of course, in making decisions about an international summit, the federal government must consider issues that go beyond the policing and security that is to accompany such an event. However, the fact that the federal government did not discuss, in advance, the policing aspects of its potential decision with the Toronto Police Service and the Board is of concern. There is no reason why an event of this magnitude, requiring the dedication of both significant financial and human resources, should be made in isolation from key partners. While the federal government's ultimate choice of Toronto as the venue may not have been any different if it had consulted with the Toronto Police Service and Board, this consultation would have provided a forum for particular concerns to be raised, explored, and, hopefully, addressed by the parties before a final decision was made. At the very least, the more advance notice the Toronto Police Service would have had about Toronto possibly being the host city, the more time it would have had to plan for the policing of the event.

B. THE SELECTION BY THE FEDERAL GOVERNMENT OF THE LOCATION AND VENUE FOR THE G20 SUMMIT

i. The Summit Management Office

An international summit is the work of multiple partners, but decisions about its location and associated logistics are made by the federal government. For the G8 and G20 Summits, the federal government created the Summits Management Office ("SMO") to coordinate the many details that accompany events of this nature.

The SMO, a branch of Canada's Department of Foreign Affairs and International Trade, is established when Canada hosts a major international event. The SMO's responsibilities for the G8 and G20 Summits included assisting in planning and overseeing the logistical arrangements for the events, including travel arrangements for world leaders and their delegations, accommodations and the retention of professional services for a multitude of Summit-related needs. While the SMO planned and coordinated the content and logistical details of the event, it did not have a role with respect to security.

ii. Initial information provided to the Toronto Police Service

The RCMP "knew that Toronto would most likely be the location" for the G20 Summit and in fact, was responsible, along with the Integrated Security Unit ("ISU") partners,¹⁰ for submitting

⁹ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 62.

¹⁰ Later in this chapter, I will describe in detail the role and function of the Integrated Security Unit ("ISU") and how it coordinated the operational planning of its partners for the G20 Summit. In summary, the ISU was established to plan and coordinate all security-related matters for the G8 and G20 Summits. For the G20 Summit, the ISU was comprised of five partners: the RCMP, the Ontario Provincial Police, the Toronto Police Service, Peel Regional Police, and the Canadian Forces. The RCMP lead the ISU.

plans to the federal government that assisted with their decision to choose Toronto as the venue.¹¹ These plans essentially examined three possibilities: (i) hosting both the G8 and G20 Summits in Muskoka, (ii) hosting both Summits in Toronto, or (iii) hosting the G8 Summit in Muskoka and the G20 Summit in Toronto. In the fall of 2009, the RCMP started planning for a G20 Summit based on certain assumptions, but the location had still not been confirmed.¹²

The Toronto Police Service first developed an awareness about the possibility of the G20 Summit being hosted in Toronto in September 2009. The information provided to the Toronto Police Service came from the RCMP,¹³ not from the SMO or any other federal body. At the point when the Toronto Police Service first understood that Toronto was a possible host city, there was very little information made available to it. The communications from the RCMP at this point in time served more as a “heads up” that an event of this magnitude may be arriving. No planning could properly begin until the location was officially confirmed by the federal government.

Although little information was available at the time, before any official announcement that Toronto was to be the location of the G20 Summit, the Toronto Police Service prepared a “Project Charter and Scope Statement” that applied to both the G8 and G20 Summits.¹⁴ The first draft of this document was created on November 3, 2009 and was updated on December 8, 2009. The document is brief. It contained general information about the policing of both events, including background concerning the decision to hold both events in Canada; the Toronto Police Service’s Mission Statement for the policing of the G20 Summit; examples of policing challenges that arose at previous international summits; an overview of “deliverables” associated with the Toronto Police Service’s planning and policing functions; an organizational chart of the Toronto Police Service Planning Team members; and a list of assumptions that were made at the time the document was drafted. However, at this stage the Toronto Police Service’s planning was delayed by the absence of two key pieces of information: confirmation of the city and of the venue that would host the G20 Summit.

iii. The federal government’s official announcement about the G20 Summit’s location

Both the Toronto Police Service and RCMP told the Review that until a public announcement from the Government of Canada was made concerning the specific location of the G20 Summit, planning for the event could not begin in earnest.¹⁵

¹¹ The RCMP submitted a preliminary analysis of the options for the location of the G8 and G20 Summits to the federal government on 8 October 2009. As part of this preliminary analysis, the Toronto Police Service (along with the other ISU partners) provided the RCMP with an initial financial projection of its costs for the policing of the G20 Summit. The Toronto Police Service was not involved in any direction discussions with the federal government concerning this preliminary analysis. See also E-mail from RCMP to various recipients, “Toronto announcement” (7 December 2009) at 06:42.

¹² Review’s Interview with the RCMP (7 March 2011, Ottawa).

¹³ E-mail from RCMP to Toronto Police Service, “G8/G20 Planning Assumptions” (10 September 2009) at 13:05.

¹⁴ Toronto Police Service, “Project Charter and Scope Statement” (3 November 2009).

¹⁵ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 58; Review’s Interview with the RCMP (7 March 2011, Ottawa).

On December 7, 2009, following his meeting with President Lee Myung-bak of South Korea, Prime Minister Stephen Harper announced publicly that the 2010 G20 Summit would be hosted in Toronto:

President Lee and I had excellent discussions on regional security, global issues and, of course, coordination of the G-20 meetings next year. I look forward to working closely with President Lee as Canada hosts our G-20 summit in Toronto on June 26th and 27th, 2010. I also look forward to returning to Korea next fall for the G-20 meeting here. We will be co-chairing those meetings.¹⁶

With this announcement, the Toronto Police Service had just over six months to plan for the largest and most complex policing operation in its history.

Based on the information obtained by the Review, no specific rationale emerges to explain the amount of time that passed between the date of the formal announcement that the G20 Summit was to be held in Canada (September 25, 2009) and the date Toronto was announced as the host city (December 7, 2009). I can reasonably infer that the 2 ½ months was, at least in part, used to determine whether Muskoka could accommodate both Summits or whether an alternative venue for the G20 Summit was required. Of course, this decision would have to consider issues such as adequacy of infrastructure to host two international events (e.g. hotel accommodations, airport access, etc.), media access to the events, and security issues. These are important considerations. However, it would have made sense for the federal government to integrate the Toronto Police Service and the Board in the discussions and decision-making leading to the selection of Toronto as the host city. This integration would have ensured that the 2 ½ months that passed could have been used by the Toronto Police Service for planning in the event that Toronto was ultimately selected.

iv. The federal government's official announcement about the G20 Summit's venue

On the same day that Prime Minister announced Toronto as the location for the G20 Summit, the Toronto Police Service asked the RCMP to provide further information about the specific venue for the event. In an e-mail exchange, the Toronto Police Service referred to a "rumour" that the Metro Toronto Convention Centre ("MTCC") had already been announced as the official event venue. In response, the RCMP stated that the SMO had "confirmed" that venue.¹⁷ However, at that time, no public announcement concerning the MTCC had in fact been made.

The Toronto Police Service had some involvement in assisting the RCMP assemble information about the possible venues in Toronto that could be used to host the Summit. In November 2009, the Toronto Police Service responded to inquiries from the RCMP concerning policing capacity and hotel room capacity for the event. The Toronto Police Service also led a tour of RCMP officials who came to Toronto to evaluate the venue options. At that time, two options were being

¹⁶ "Statement by the Prime Minister of Canada after his bilateral meeting with President Lee Myung-bak of Korea" (7 December 2009), available: <http://www.pm.gc.ca/eng/media.asp?category=3&featureId=6&pageId=49&id=3027> [emphasis added].

¹⁷ E-mail from RCMP to Toronto Police Service, "Re: Toronto announcement" (7 December 2009) at 16:45.

considered: (i) the MTCC and (ii) the Direct Energy Centre and the Allstream Centre at the Canadian National Exhibition Grounds.¹⁸ The RCMP's and Toronto Police Service's view was that the MTCC was the preferable of the two venues. It was thought that the Direct Energy Centre and Allstream Centre would be problematic because in order to shuttle world leaders and Summit delegates between the various hotels and those venues, a secure corridor would need to be established that would require the complete shutdown of many public streets. Even with this precaution, there would be an increased threat risk for world leaders being transported through that corridor.¹⁹

At around this time, the RCMP was also meeting with various federal government officials and, in particular, officials in the Prime Minister's Office. One question that emerged from these meetings, stated by representatives of the Prime Minister's Office, came from the Prime Minister. The RCMP was asked why it was "not closing down more of downtown Toronto in order to provide a safe environment for the [Internationally Protected Persons]."²⁰ The RCMP solicited the Toronto Police Service's views to help answer this question. In an e-mail exchange, the Toronto Police Service was asked to estimate the number of residents and businesses that would be affected if a five kilometer area "stretching north from the Exhibition Grounds to encompass the hotel corridor" was shut down for the G20 Summit. The boundaries for this area were Wellesley Street to the north, Lake Ontario to the south, Church Street to the east, and University Avenue to the west.²¹

In its response, the Toronto Police Service provided a "very conservative" estimate of between 150,000 and 200,000 residents and "countless" businesses, including hospitals, facilities, and subway and train stations, as well as major municipal roads.²² The Toronto Police Service went on to provide its view with regard to a shutdown of this five kilometre area:

On its face this proposal is not feasible and the impact to the City of Toronto would [be] unacceptable. An excellent example of how this proposal would affect the city was seen on Wednesday evening when a portion of the Yonge Street subway line was shut down stranding 300,000 commuters. Clearly this proposal would affect 3 to 4 times that many people.²³

The RCMP agreed with the Toronto Police Service that placing a controlled zone around all downtown hotels was not "at all feasible," but that further discussion on that topic would be required with federal government officials.²⁴

¹⁸ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 59; Toronto Police Service Answers to Undertakings, No. 18 (21 February 2012).

¹⁹ E-mail from RCMP to Toronto Police Service and others, "Update on Ottawa meetings" (30 November 2009).

²⁰ E-mail from RCMP to Toronto Police Service and others, "Update" (21 November 2009).

²¹ E-mail from Toronto Police Service to RCMP, "Extended CAZ" (20 November 2009).

²² E-mail from Toronto Police Service to RCMP, "Extended CAZ" (20 November 2009).

²³ E-mail from Toronto Police Service to RCMP, "Extended CAZ" (20 November 2009).

²⁴ E-mail from RCMP to Toronto Police Service, "Fw: Update" (22 November 2009).

In presentations to the National Security Advisor and the SMO delivered in Ottawa on November 30, 2009, the RCMP reviewed the venue options and explained its preference for the MTCC. The National Security Advisor and SMO ultimately supported the RCMP's recommendation that the MTCC be selected as the venue. The RCMP then met with officials in the Prime Minister's Office outlining "three scenarios" for venue options in Toronto.²⁵ At the meeting, the National Security Advisor requested "from [the Prime Minister's Office] that a decision be made asap in relation to the G20 in Toronto and as soon as possible in relation to the venue so the police and partners can get started with our planning and work in Toronto."²⁶ The Toronto Police Service was not involved in any of these meetings or discussions.

Following these Ottawa meetings, on January 8, 2010, RCMP representatives met in Toronto with officials from the Prime Minister's Office, officials from the SMO, the National Security Advisor, and the Coordinator for 2010 Olympic and G8 Security. The purpose of the meeting was "to make a presentation on [the RCMP's] security plan for the [MTCC]." Toronto Police Service representatives were not involved in the initial set of meetings with federal government officials in Toronto, but took the officials on a bus tour to observe the various areas which would ultimately comprise the security zones for the G20 Summit.²⁷

Although the announcement that Toronto would be the location of the G20 Summit was made in December 2009, it was not until February 19, 2010 that the federal government announced that the MTCC would be the official venue for the G20 Summit. At a media conference, Minister of Labour Lisa Raitt and Minister of Foreign Affairs Lawrence Cannon described the MTCC as "a world-class venue for the G20 Summit." The news release issued by Foreign Affairs and International Trade Canada explained that the MTCC has "hosted high-security events," was an "accessible location" with "proximity to the airport," and an appropriate "facility size." In terms of security, the news release also stated that the "long-standing working relationships with high-security teams, including the RCMP, Toronto Police Service, Ontario Provincial Police and the United States Secret Service" contributed to the choice of the MTCC as the Summit venue.²⁸

At the time the federal government made its selection and announcement of the MTCC official venue, the G20 Summit was just over four months in the future.

²⁵ E-mail from RCMP to Toronto Police Service and others, "Update on Ottawa meetings" (30 November 2009); E-mail from RCMP to Toronto Police Service and others, "Meeting with Prime Minister's Office December 3rd 2009" (4 December 2009).

²⁶ E-mail from RCMP to Toronto Police Service and others, "Meeting with Prime Minister's Office December 3rd 2009" (4 December 2009).

²⁷ E-mail from RCMP to Toronto Police Service and others, "Update on latest P[M]O Meeting January 8th" (9 January 2010).

²⁸ Foreign Affairs and International Trade Canada, News Release, "Government of Canada Brings G20 Summit to Toronto" (19 February 2010), available: <http://www.international.gc.ca/media/aff/news-communiques/2010/071.aspx?view=d>.

C. THE TIMING OF THE FEDERAL GOVERNMENT'S SELECTIONS AND ANNOUNCEMENTS REGARDING THE G20 SUMMIT AFFECTED THE TORONTO POLICE SERVICE'S PLANNING FOR THE EVENT

i. Official announcement required for planning purposes

It took a total of approximately five months from Prime Minister Harper's September 25, 2009 announcement for the federal government to make its selection and announce the details concerning the event's specific location and venue. The Review was advised by the Toronto Police Service that during this time the planning for the policing and security of the G20 Summit could not fully move forward. The Toronto Police Service confirmed that while the Toronto Police Service may have provided information to the RCMP about the venue options and was given some advance indication that the MTCC was the selected venue for the G20 Summit, it was not until the official announcement by the federal government that this choice could be considered confirmed and planning by the Toronto Police Service could properly start:

This public announcement allowed the Toronto Police G20 planning team to begin meeting, communicating and planning with stakeholders directly impacted by the location of the Summit.²⁹

This placed the Toronto Police Service in a difficult and unfamiliar position. With the largest security event on the horizon, the Toronto Police Service had been frozen in its planning efforts until the federal government's decision-making process was complete and an announcement was made.

The RCMP found itself facing similar challenges. While it knew a G20 Summit would be taking place in June 2010, it took an official public announcement by the federal government "to get the planning gears in place."³⁰

There were many issues and challenges that arose as a result of the Toronto Police Service having to wait for the federal government to confirm details relating to the Summit's location and venue. I will canvass those issues below with a view to assessing whether, after the location and venue for the G20 Summit had been confirmed, the amount of time available to the Toronto Police Service was adequate for the various planning aspects associated with the policing of the event.

ii. Funding challenges respecting the Toronto Police Service's involvement

An event of the G20 Summit's magnitude requires dedicated and significant government funding. None of the policing agencies involved in the G20 Summit had anticipated or set aside funds for the Summit in their annual budgets. The federal government was to be the primary source of

²⁹ Toronto Police Service Answers to Undertakings, No. 18 (21 February 2012); Review's Interview with Chief William Blair (11 November 2011, Toronto) at 58 and 59.

³⁰ Review's Interview with the RCMP (7 March 2011, Ottawa).

funds for the event and this would include the provision of funding to the various policing agencies that would be participating.

Although the event was taking place in a matter of months, we were advised by both the Toronto Police Service and RCMP that until certain details had been confirmed, including the location and venue of the G20 Summit, funding commitments from the federal government would not be finalized. This meant that none of the policing agencies, including the Toronto Police Service, would know for certain how much money it would be provided for its policing activities during the event. This created significant challenges for the Toronto Police Service in its planning. At a meeting of the Board on January 21, 2010, Chief Blair included the following in his report:

Funding commitment to procure certain essential equipment and to get critical infrastructure in place in time for the event is required. These items are necessary to ensure that the Service can deliver adequate and effective public safety services to the City of Toronto and in support of Toronto's assistance to the Royal Canadian Mounted Police (RCMP) in their mandate to ensure the safety and security of Summit delegates.³¹

The Toronto Police Service would incur significant expenses for its policing role at the G8 and G20 Summits. As the Toronto Police Service's budget did not include funds for this purpose, the Toronto Police Service asked the Board to forward a request for funding to the City of Toronto and seek funds in advance of any commitment by the federal government. The intent was that the Toronto Police Service could acquire necessary equipment and make other arrangements without delay and then, once funding arrangements with the federal government were finalized, the City could be reimbursed for any funds it allocated. In the same report to the Board, the Chief noted "there is a financial exposure for the Service and the City, as all requirements and related funding have not been reviewed and approved by the Federal government and a formal agreement is not yet in place and may not be until after the event."³²

The Board received Chief Blair's report and passed a motion to forward it to the City of Toronto "so that the necessary funds can be approved by City Council to enable the Service and the City to make the necessary commitments for equipment and other needs required for the G8/G20 security operations." The Board expressed concern about how the funding requirement for the G8 and G20 Summits may affect the Toronto Police Service's 2010 operating budget, "particularly given the absence of a confirmation from the federal government about cost-recovery." The Board also passed a motion to send correspondence to the federal Minister of Public Safety "encouraging him to expedite the conclusion of a Memorandum of Understanding and a commitment of funds."³³

At the same time, the Toronto Police Service and the City of Toronto were in discussions with the federal government in an effort to obtain a clear commitment, in the absence of a formal

³¹ Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service" at 2.

³² Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service" at 1.

³³ Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service" at 6.

agreement, that all security-related costs arising for the Toronto Police Service's involvement in the G20 Summit would be reimbursed. Correspondence between Chief Blair and the Government of Canada was exchanged. In his letter requesting a funding commitment, Chief Blair noted that "many funding commitments...must be made now, or we risk the ability to provide proper security to the event." Chief Blair's letter went on to underscore that the Toronto Police Service required "a firm commitment from the Government of Canada...[t]he City of Toronto and the Toronto Police Service cannot move forward without this commitment."³⁴ Subsequently, the Government of Canada was advised that if it were to provide a letter containing funding assurances, this would "go a long way to leverage [Toronto City] Council approval."³⁵

In a letter dated February 16, 2010, the Government of Canada noted that the G20 Summit had not yet been designated an event to which the federal government's security cost reimbursement policy would apply and that the request for this designation had been recently submitted. The letter went on to state that once federal government funding had been secured for the G20 Summit, "a contribution agreement will be developed to address all incremental G20 policing and security-related costs incurred and *deemed eligible for reimbursement* under the Policy."³⁶ Ultimately, the Government of Canada said:

We can assure you that the Government of Canada will provide financial assistance through contribution agreements for the *reimbursement of all eligible incremental policing and security costs* incurred by the Toronto Police Service and the City of Toronto as a result of hosting two major international events in June 2010.³⁷

The Government of Canada's letter was forwarded to the Board for its information at its February 18, 2010 meeting. The Board "expressed concerns" about the process that would be used to procure equipment for the G20 Summit. However, the Board did not pass any motions in relation to the G20 Summit funding issue or the absence of an agreement between the Board and the federal government. The Board also did not seek any information regarding what the federal government's criteria for reimbursement of policing and security would be.³⁸ I note that the Board is entirely absent in all of the efforts and correspondence that attempted to convey to the federal government the difficult position in which the Toronto Police Service was placed and to secure a clear funding commitment.

At its meetings of February 22 and 23, 2010, Toronto City Council approved a report that committed funds "for the incremental, extraordinary and justifiable policing and security related

³⁴ Correspondence from Chief William Blair to the Government of Canada (4 February 2010).

³⁵ E-mail from Joe Pennachetti (City Manager, City of Toronto) to the Government of Canada (9 February 2010).

³⁶ Letter from the Government of Canada to Chief William Blair (16 February 2010) [emphasis added].

³⁷ Letter from the Government of Canada to Chief William Blair (16 February 2010) [emphasis added].

³⁸ Toronto Police Service Board Minutes (18 February 2010) (Closed Meeting), Item #C63, "Correspondence – Response from the Federal Government Regarding Funds for the G8/G20 Summits."

costs of the June 2010 G8 and G20 Summit meetings.”³⁹ The Toronto Police Service Operating Budget was increased by \$122.154 million for operations related to the G8 and G20 Summits.⁴⁰

The issue of funding for the Toronto Police Service’s involvement in the G20 Summit came far later in the planning process than it should have. With anticipated expenses totaling in the tens of millions of dollars, and without any of these funds forming part of the Toronto Police Service’s existing operating budget, the Toronto Police Service could not begin to prepare itself for the Summit without access to new funds. Although the federal government made the decision to hold the G20 Summit in Toronto, no agreement with the Board had been signed to guarantee any funding. Nevertheless, funding needed to start flowing immediately.

There were many uncertainties and risks in the provision of funds by the City without a final agreement between the Board and federal government, not the least of which was the level of reimbursement that would ultimately be provided by the federal government. Further, any conditions that may be attached to reimbursement were unknown. However, the Toronto Police Service, the Board, and City Council really had no choice. To ensure the Toronto Police Service was properly equipped and prepared, the parties had to proceed in the face of this risk. In this case, the federal government had the power to make unilateral decisions that would lead to the City of Toronto spending millions of dollars it had no expectation it would have to spend, with a risk that some of that spending could go without reimbursement. The Board and the City should never have had to take on these risks.

In the future, the federal government should sign the necessary funding agreements at the same time it makes decisions with million dollar consequences. This will enable funding to start flowing when planning for major events begins and will ensure that all parties are clear as to what expenses will be reimbursed. At the very least, the Board must be prepared to insist that conditions for reimbursement are negotiated and finalized in a memorandum of understanding at the earliest possible opportunity.

Recommendation No. 7: Board to negotiate framework for funding conditions

In all cases where the Toronto Police Service will be involved in policing and security for a major event, the Board should, at a minimum, negotiate a framework funding agreement with the entity requiring the Toronto Police Service’s assistance. This agreement should set out the funding and reimbursement conditions with respect to the Toronto Police Service’s expenses associated with planning and policing the event.

³⁹ City of Toronto, Staff Report regarding Security Funding Requirements for the 2010 G8/G20 Summits (19 February 2010), available at: <http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-27589.pdf>.

⁴⁰ City of Toronto, Attachment 1 – Confidential Information made public on June 3, 2010 (19 February 2010), available at: <http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-30808.pdf>.

iii. Challenges regarding acquisition of equipment and facility arrangements

With only five months left before the G20 Summit would take place, the Toronto Police Service needed to purchase and upgrade certain equipment and infrastructure for the event.

In the same January 21, 2010 report to the Board, Chief Blair provided a summary of the “significant expenditures” that would be necessary to secure the equipment and infrastructure required.⁴¹ They were as follows:

- *Radio infrastructure for voice communications:* The Toronto Police Service advised that an upgrade to its radio infrastructure was “critical” for the G20 Summit and “must be ordered as soon as possible” to permit sufficient time for installation. The cost of the upgrade and expansion contemplated was \$12 million.
- *Radios:* Approximately 2,500 radios would have to be ordered for the event. The Toronto Police Service noted that “radios must be ordered by the end of February to ensure delivery and sufficient time to program the radios.” The estimated cost for the radios was \$2.5 million.
- *Facilities:* Various facilities for staging officers just before deployment, relief areas and feeding of officers during and after their shift would be required. The Toronto Police Service noted that it was assessing existing facilities, but it would be likely to rent certain facilities as well. The Board was advised that any contracts for facilities “[need] to be done as soon as possible, as these same facilities are being considered by the RCMP and other outside agencies.” The Toronto Police Service made specific mention of the need to acquire a separate building to function as a Prisoner Processing Centre and that the acquisition “must begin by February to ensure the facility can be prepared in time for the event.”
- *Accommodations:* Both Toronto Police Service officers and external officers assisting the Toronto Police Service would need accommodation during the event. The Toronto Police Service was in the process of considering the use of university and college residences as well as hotels. It advised that “[c]ontracting or renting these rooms need to be done as soon as possible.” No cost estimate for this item was provided in the report to the Board.
- *Closed-circuit Television (“CCTV”) and Infrastructure:* The Toronto Police Service required live video images of various locations in Toronto and the Prisoner Processing Centre during the G20 Summit. The cameras required “must be ordered by mid-February” and were estimated to cost \$1.7 million.
- *Protective Clothing:* Items such as helmets and gas masks were going to be ordered by the Toronto Police Service. In order to ensure the equipment arrived early enough to provide time for fitting it to the individual officers, the order had to be placed by “early February.” The equipment was estimated to cost up to \$5 million.

⁴¹ Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service” at 3-5.

Time was of the essence, as can be seen by the type of equipment and infrastructure on the list and the speed with which orders had to be placed. The time available to the Toronto Police Service to make the necessary equipment acquisitions and facility arrangements was condensed for one reason: the proximity between the dates the federal government confirmed the location and venue details for the G20 Summit and the actual event itself (approximately six months and four months, respectively). At the very least, until the Prime Minister announced in December 2009 that Toronto would be the host city for the G20 Summit, it would have been premature for the Toronto Police Service to move forward with any of these acquisitions or arrangements.

The report to the Board communicated that there was a risk that if steps were not almost immediately taken, some of the equipment and facilities would not be secured in time for the event. The Chief's report put it succinctly: "[I]t is necessary to proceed with acquisitions immediately...[d]elays in funding approvals may impact on our ability to acquire the necessary items and will compromise our ability to deliver adequate and effective public safety services."⁴² This placed the Toronto Police Service and the Board in vulnerable positions. The Toronto Police Service's assessment was that the adequacy and effectiveness of its policing of the G20 Summit would be compromised if certain equipment and facilities were not secured in time. The Toronto Police Service's adequacy and effectiveness is a core statutory responsibility of the Board. However, this was a unique situation because the Board was not in control of the surrounding circumstances that affected the execution of its statutory responsibility. Rather, it was the federal government that was making the controlling decisions and was doing so on its own timeline, absent any consultation with the Board.

Recommendation No. 8: Board involvement in consultation

Where the Board learns of the potential for Toronto to be selected as the host city for an event sponsored by the federal or provincial government, the Board should make a formal request that it be consulted, in advance of final decisions being made, on matters relevant to the Toronto Police Service's policing function at the event. In particular, the Board should request information that will enable it to understand the Toronto Police Service's role at the event, the legal framework applicable to the event's policing, and other relevant matters.

iv. Challenges regarding the development of policing plans for the event

a. Dependency on another source for necessary planning information

While the RCMP and the OPP were dealing directly with the SMO and Prime Minister's Office, the Toronto Police Service was not. Therefore, throughout the planning phase for the G20

⁴² Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service" at 5.

Summit, the Toronto Police Service was receiving information from the RCMP concerning various details that were relevant to the operations for the event.

The information provided to the Toronto Police Service from the RCMP often came in the form of “assumptions” that would set out certain statements or facts that police services should take as a given and then develop their plans accordingly.⁴³ As requirements for the Summit changed because of logistical or programming decisions made by the federal government, the new assumptions were provided to the Toronto Police Service so that it could refine its plans.

The flow of information was a challenge for the Toronto Police Service G20 Planning Team (“Planning Team”). Because of the manner in which information came to the Planning Team – from the federal government to the RCMP and then to the Toronto Police Service – the Toronto Police Service was never in control of when it would receive the information it required to perform its planning function. Instead, the Toronto Police Service depended entirely on others to give it the information it required to undertake this planning process.⁴⁴

Chief Blair spoke to the challenges of planning for an event where the Toronto Police Service does not have immediate access to the event’s details:

I think there were challenges as they were because again authorization levels and decision-making was spread over many organizations in an integrated environment, you know, it takes time to get decisions made and there is not always complete consistency in communication.⁴⁵

In an internal Toronto Police Service memorandum prepared after the G20 Summit, some of these communication challenges were discussed. While the overall relationship between the various police services planning for the G20 Summit was characterized as positive, “partners had communication challenges especially in the very early stages and as a result information was not exchanged as effectively or to the extent that [I] had expected.”⁴⁶

b. Short timeline for Toronto Police Service to develop the policing plans

The G20 Summit required various police and security services to collaborate and develop detailed operational plans for the event. From the date Toronto was announced as the location for the event – a detail that was critical for much of the operational planning that unfolded – the Toronto Police Service had approximately six months to develop their plans.

⁴³ Review’s Interview with the RCMP (7 March 2011, Ottawa).

⁴⁴ Toronto Police Service Answers to Undertakings, No. 13 (21 February 2012): “The SMO received concepts and requirements for the Summit event from the [Prime Minister’s Office]. The SMO planned and operationalized those concepts and requirements. The SMO shared these event requirements and information with the RCMP who in turn shared them with ISU security partners.”

⁴⁵ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 78.

⁴⁶ Toronto Police Service, Untitled memorandum (22 July 2010) at 1.

The planning for the event was not undertaken by each police and security service in isolation. In this sub-section, I will focus on the planning-related areas in which the Toronto Police Service experienced challenges given the amount of time available to develop its policing plans.

In a briefing for the Review delivered by the RCMP, we were advised that for events within the scope of the G20 Summit, police and security services would typically have up to two years to plan.⁴⁷ A six month planning period was far less than what was typically available and would create additional pressure on an already complicated planning process. In his interview with the Review, Chief Blair explained the many dimensions of the G20 Summit policing plans, their complexity and the range of possibilities for which they had to provide. In his view, the planning required was “extraordinary”:

[The Toronto Police Service was] planning for any number of eventualities and...doing [its] very best to make sure that the resources and plans were put in place. We were also doing preparation for training our people and tried to build this coordination in an unprecedented event of this scale. Now, we work in joint force operations and have sort of some experience in working in joint force, even in public order units, or public order events with other police services, but nothing on this scale and nothing with so many different organizations. The complexity of this I think needs to be recognized...in developing memorandums of understanding between our services and other services, the development of command control structures, the training of and the determination about training is required. Even just as the logistics, it was quite extraordinary and there were issues that impacted us on the purchasing and acquisitions because the timelines were inconsistent with our, some policies.⁴⁸

In the internal memorandum referred to above, a senior Toronto Police Service official stated that “[p]lanning timelines were insufficient. [Six] months from the announcement Dec 07, 2009 presented an almost insurmountable challenge to prepare for the largest security mobilization in Canadian history.”⁴⁹ One core decision that needed to be made in order for all of the planning to begin in earnest was what policing and security roles would be played by each of the G20 Summit policing partners. It was “only months into the planning process and after a number of meetings” that these roles were defined. Information concerning “where, when and how the Summit would be held” was required before this core decision could be discussed and made.⁵⁰

At the time the Toronto Police Service created and even finalized its operational plans for the G20 Summit, it clearly recognized that the amount of time available to it was not ideal. At the beginning of each chapter of the Toronto Police Service’s 26-chapter Operational Plan for the event, the following Disclaimer was included:

⁴⁷ Briefing by the RCMP for the Independent Civilian Review into Matters Relating to the G20 Summit and the Office of the Independent Police Review Director (18 March 2011, Toronto).

⁴⁸ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 72-3.

⁴⁹ Toronto Police Service, Untitled memorandum (22 July 2010) at 3.

⁵⁰ Toronto Police Service, Untitled memorandum (22 July 2010) at 2.

Disclaimer

These plans have been created, analyzed and scrutinized to the level of detail possible in the 2010 G20 ISU Project Timeline.

It must be noted, in many instances, the key planning assumptions provided to the project team lacked sufficient detail, and will be refined as information becomes available.

Every effort has been made to provide detailed plans. As the G20 ISU Planning assumptions become more clear so will the planning detail and funding estimate[.]⁵¹

c. Short timeline prevented full involvement of operational decision-makers in planning and necessary testing of plans

Despite the short amount of time available to the Toronto Police Service to develop its operational plans, Chief Blair had full confidence that the officers assigned to the Planning Team would create the necessary set of plans for the event and that all logistical issues would be addressed.⁵² The Toronto Police Service completed its set of operational plans in time for the G20 Summit. I discuss these plans later in this chapter when I examine the role the Toronto Police Service played in developing the policing framework for the G20 Summit.

It is one matter to develop a set of plans. It is quite another to place individuals in a command position where those plans are meant to be put into action and shape the judgment calls and decisions that are made. It is in this area – the integration of the Toronto Police Service commanders with the operational plans – that challenges from a timing perspective were presented. With the plans being developed and drafted until early June 2010, and sometimes “until the day before deployment,”⁵³ there was little time, as shown in the Disclaimer, for the Toronto Police Service officers assigned to operational commander functions for the event to “immerse themselves in [the] plans” in advance. This meant that members of the Planning Team had to provide assistance to the operational commanders during the G20 Summit itself.⁵⁴ It also meant that the plans that were ultimately developed could not be properly tested prior to the Summit. Chief Blair referred to both of these issues in his interview with the Review:

I think timing, time was probably the determining factor, the most significant factor and it's not the only factor of course. There were other impacts on this, but I think the short time period did not allow us to test the planning, test the planning through exercises and through training and to fully integrate the operational commanders into those plans and I think it had an impact on the outcome.⁵⁵

⁵¹ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 3.

⁵² Review's Interview with Chief William Blair (11 November 2011, Toronto) at 74.

⁵³ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 35.

⁵⁴ Toronto Police Service, *Untitled memorandum* (22 July 2010) at 3.

⁵⁵ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 70.

The example of the two Toronto Police Service Incident Commanders who had overall operational responsibility and decision-making authority for the Toronto Police Service during the G20 Summit is instructive. The lack of time available to obtain input from these Incident Commanders and fully involve them in the development of the plans “meant the Incident Commanders...were put in the position of executing plans they did not develop.”⁵⁶ The same point applies with respect to Toronto Police Service field commanders, who were also not fully integrated in the development of operational plans and therefore “had no input into how the plan would be made operational.” The Toronto Police Service itself concludes in its *After-Action Review* that the officers with command and decision-making authority were simply “not completely familiar with the scope of the plan” they were required to execute.⁵⁷

The lack of time available to more fully involve Toronto Police Service operational commanders and decision-makers with the planning process and gain their input is a serious matter. Those who will ultimately be responsible for executing a set of complex policing plans should not become familiar with them for the first time during the operation itself. This placed the operational decision-makers in a position of having to make their own real-time decisions on the basis of someone else’s advanced thinking. Chief Blair explained that this was not an ideal way to proceed:

In a more ideal setting, had we had more time, certainly I think everyone involved would have liked to have had more opportunity to integrate the operational commanders into the latter stages of the planning process, there would have been, it would have been very preferable to have the opportunity to test our assumptions, to test our procedures, to make sure that the equipment worked, people were where they were supposed to be, that there were exercises and training exercises and operational exercises that would have enabled us to be better prepared.⁵⁸

In order to maximize the effectiveness of the Toronto Police Service’s operational plans and ensure there was a reasonable level of comfort on the part of those who would be executing them, the operational and field commanders should have been afforded ample opportunity to give their views with respect to the content of the plans, contingencies that should be accounted for, alternative approaches to handling a particular situation, and other relevant issues.

To be clear, these Toronto Police Service officers were consulted to some degree throughout the planning process. However, the amount and depth of this consultation was insufficient.⁵⁹ Significantly, it was not a lack of desire or an oversight on the part of the Toronto Police Service that created this state of affairs. Rather, I conclude that there was an inadequate amount of time available at the “front-end” to develop the operational plans. This was a direct result of how late in the process the federal government confirmed its decisions concerning the location (Toronto) and venue (MTCC) for the G20 Summit. These late decisions and announcements by the federal

⁵⁶ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 35.

⁵⁷ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 35.

⁵⁸ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 73.

⁵⁹ Toronto Police Service, *Untitled memorandum* (22 July 2010) at 3; Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 35.

government had a “domino effect” on the Toronto Police Service’s planning process and rendered it unmanageable to properly consult with the Toronto Police Service operational and field commanders in the timeframe available.

Recommendation No. 9: Confirmation concerning Toronto Police Service’s planning process

The Board should request regular updates concerning the progress of the Toronto Police Service in planning for the policing of a major event. In particular, the Board should seek information from the Toronto Police Service about (i) what mechanisms exist to capture, during the planning process, the input of those who will have operational decision-making responsibilities during the event and (ii) what testing of the operational plans will be conducted before the event.

As a result, the Toronto Police Service was faced with having to execute operational plans that had not benefitted from the input of key personnel and which were not properly tested. The Toronto Police Service did the best with a difficult situation, but as a result of circumstances created by the federal government’s timing, the Toronto Police Service was placed in the position of executing a plan that may not have been adequate or effective for the operation.

Recommendation No. 10: Time available for Toronto Police Service operational planning

Where the Toronto Police Service is required to develop operational plans for a major event, the Board should consult with the chief of police to determine whether there is a sufficient amount of time available for proper planning and, specifically, whether the adequacy and effectiveness of policing for the event may be compromised by the time available to plan. If the adequacy and effectiveness of the Toronto Police Service’s policing may be affected by the amount of time available for planning, the Board should communicate this to the government entity hosting the event and seek assistance to address challenges and gaps.

D. COMMUNICATION OF PLANNING CHALLENGES TO THE BOARD

While the Toronto Police Service was developing its operational plans for the G20 Summit, the Chief continued to meet with the Board regularly and provide updates on the progress being made to prepare for the event.

In our interviews of Board members, it appears that the Chief, in reporting to the Board, identified the timing challenges faced by the Toronto Police Service very generally. As Councillor Adam

Vaughan put it in his interview, when taken to the “Disclaimer” that appeared at the front of each chapter of the Toronto Police Service Operational Plan: “[The Chief] was pretty clear...that disclaimer was present in tone if not in direct words, every time he briefed us.”⁶⁰ This point was echoed by Councillor Pam McConnell, who stated that while the Chief “put on his brave face at times...he did say on a couple of occasions at the Board table that he was concerned about the planning time.”⁶¹

The Board was itself concerned about the policing for the G20 Summit being planned on such short notice. Each Board member we interviewed recalled their individual and the Board’s collective concern about the amount of time available to the Toronto Police Service to plan for the event. Councillor Vaughan summarized his recollection of being concerned about the amount of time available and the pressure it caused this way:

It was all over the map. You know we were getting briefings from the BIA, [Business Improvement Area] this is where the fence is going to be. We walked to Police Service, it would be a different fence. You walked to the Mayor’s Office, there was a third location for the fence. So you didn’t need to say, there isn’t enough time to do this. It was apparent to everyone. It was being made up, we were making things up as we were moving along.⁶²

Hon. Hugh Locke also explained his reaction when he learned initial details about the G20 Summit:

When the Chief, at a confidential meeting, started to tell us exactly the extent of the involvement that would be required by the force, my thinking was that it would be difficult to totally and adequately plan in within the timeframe that was dictated.⁶³

However, some members also recalled that the Chief emphasized to the Board that the Toronto Police Service would complete its planning work in time for the Summit and have sufficient resources to police the event. As one Board member put it:

I think there were some concerns with respect to timing as expressed by the Chief, but he felt that if we moved by a particular timeline that he could put in place all the necessary infrastructure he needed.⁶⁴

The Chief was placed in a very demanding situation. The G20 Summit had been announced and it was coming to Toronto. Policing would be necessary and the Toronto Police Service would have to play a central role in that regard. However, it may have been helpful for the Chief to provide the Board with more detailed information about how the short timeline was affecting the Toronto Police Service’s ability to properly plan for its policing role. This information may have led to more focused consultation and discussion between the Chief and the Board and would have left

⁶⁰ Review’s Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 46.

⁶¹ Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 78.

⁶² Review’s Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 45.

⁶³ Review’s Interview with Hon. Hugh Locke (16 September 2011, Toronto) at 50.

⁶⁴ Review’s Interview with Councillor Frank Di Giorgio (29 August 2011) at 36.

the Board with a clearer picture of the potential risks to the Toronto Police Service's policing operation.

If the Board had been informed of these risks as early as the Toronto Police Service first became aware of the *possibility* that the G20 Summit was going to take place in Toronto in September 2009,⁶⁵ the Board could have acted on this information. It could have approached the federal government with a request that the Toronto Police Service be involved in the discussions leading up to the ultimate decisions about the location and venue for the event. It could have emphasized that in the absence of certain decisions being confirmed, such as those pertaining to location and venue, the ability of the Toronto Police Service to deliver adequate and effective policing during the G20 Summit would likely be compromised.⁶⁶ With greater exposure to the federal government's decision-making process, the Toronto Police Service would have been able to begin certain aspects of its planning at an earlier point in time.

Recommendation No. 11: Board to be informed of possibility of major event

The Board should be informed by the chief of police, as soon as practicable, where a reasonable possibility exists that the Toronto Police Service may be involved in the policing of a major event hosted by a government entity. The Board should seek information and clarity concerning the proposed decision-making structure and process related to the policing of the event.

Term of Reference 1(a) also asks me to determine whether the Toronto Police Service had "sufficient time to...provide adequate information to the Board so that the Board had sufficient time to discharge its responsibilities pursuant to the Act." This aspect of the Term of Reference overlaps with other, more specific, Terms of Reference that require an examination of the specific information passed between the Toronto Police Service and the Board concerning the policing of the G20 Summit. To examine this subject properly, a detailed analysis of what information was available to the Toronto Police Service, what was actually shared with the Board, and what role the Board played in seeking information in respect of G20 Summit matters is necessary. In *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, I will analyze these issues in depth and set out my conclusions.

⁶⁵ E-mail from RCMP to Toronto Police Service, "G8/G20 Planning Assumptions" (10 September 2009) at 13:05.

⁶⁶ The RCMP delivered this type of warning to federal government officials in January 2010. Following a series of meetings to discuss the venue for the G20 Summit and security plans being developed by the RCMP, the RCMP "made it clear that any major changes in the [G20 Summit] Program from what we knew now could result in an impact on resources that we could not handle." See E-mail from RCMP to Toronto Police Service and others, "Update on latest P[M]O Meeting January 8th" (9 January 2010).

PART II THE TORONTO POLICE SERVICE'S ROLE IN DEVELOPING THE POLICING FRAMEWORK FOR THE G20 SUMMIT

A. DETERMINATION OF PRIORITIES AND OBJECTIVES FOR THE POLICING OF THE G20 SUMMIT

i. A legal framework: the *Foreign Missions and International Organizations Act*

The development of a policing framework for the G20 Summit took place in a particular context with many different participants. In order to understand the Toronto Police Service's role in planning its policing activities for the event, it is necessary first to understand the legal framework that is potentially applicable to intergovernmental conferences – like the G20 Summit – which are hosted by the federal government in Canada.

The federal *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 (“*FMIOA*”) grants certain privileges, immunities, and benefits to entities designated as “foreign missions,” which are diplomatic missions and consular posts of foreign states located in Canada, and “international organizations,” which include intergovernmental organizations and intergovernmental conferences at which two or more states participate.

In terms of intergovernmental conferences, the *FMIOA* includes a provision that relates to security issues. Section 10.1 of the *FMIOA* sets out a regime that governs the role and powers of the RCMP when an intergovernmental conference is held in Canada. The subsection reads as follows:

Role of RCMP

10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or continued under this Act applies.

Powers of RCMP

(2) For the purpose of carrying out its responsibility under subsection (1), the Royal Canadian Mounted Police may take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances.

For greater certainty

(3) The powers referred to in subsection (2) are set out for greater certainty and shall not be read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation.

Arrangements

(4) Subject to subsection (1), to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces, the Minister of Public Safety and Emergency Preparedness may, with the approval of the Governor in

Council, enter into arrangements with the government of a province concerning the responsibilities of members of the Royal Canadian Mounted Police and members of provincial and municipal police forces with respect to ensuring the security for the proper functioning of a conference referred to in that subsection.

As subsection 10.1(1) makes clear, an order passed under the *FMIOA* in relation to the intergovernmental conference is required to trigger the RCMP's "primary responsibility" for the security of the conference. On March 11, 2010, the Governor in Council (the federal cabinet), acting on the advice of the Minister of Foreign Affairs, made such an order in respect of the G20 Summit, which was titled the "G20 Summit Privileges and Immunities Order, 2010" ("G20 Order").⁶⁷ This Order granted to the G20 Summit, the representatives of the G20 member states, and others invited to participate in the G20 Summit privileges and immunities "[i]n order to permit Canada to fulfill its obligations as host state and to allow participants to freely and independently exercise their functions in relation to these [G20 Summit] meetings."⁶⁸

Other federal legislation deems that members of the RCMP have the duty to protect the Prime Minister of Canada and any individual who is an "Internationally Protected Person" (which included the heads of state who attended the G20 Summit and their families) as that term is defined in the *Criminal Code*.⁶⁹

Once the G20 Order was made, the *FMIOA* and its provisions governing the RCMP's powers and duties applied to all matters of security at the Summit. This established a framework in which the RCMP had ultimate decision-making authority over all security operations. As the RCMP put it:

This means that the RCMP is responsible for overseeing security planning and operations as well as the coordination of operational security requirements with federal, provincial and municipal law enforcement agencies.⁷⁰

The RCMP relied upon and referenced the *FMIOA* when explaining to its security partners its authority for operations during the G20 Summit and, in particular, its power to control and limit access to particular geographic locations during the Summit.

Subsection 10.1(4) of the *FMIOA* provides for the option of a federal-provincial arrangement to "facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces" and detail the responsibilities of each police force. This subsection and the specific decisions made with respect to it for the G20 Summit will be discussed in more detail in *Chapter 10 – The Public Works Protection Act and Ontario Regulation 233/10*.

⁶⁷ *G20 Summit Privileges and Immunities Order*, SOR/2010-62 (11 March 2010).

⁶⁸ *G20 Summit Privileges and Immunities Order*, SOR/2010-62 (11 March 2010).

⁶⁹ *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361, s. 17(1)(e) and (f). For the definition of "internationally protected person," see *Criminal Code*, R.S.C., 1985, c. C-46, s. 2.

⁷⁰ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 15.

At this point, I note that although the Government of Ontario requested that the Government of Canada enter into an arrangement under the *FMIOA*,⁷¹ no arrangement was made.

During the planning process, the Toronto Police Service struggled to understand its role, planning responsibilities and the legal authority on which it would act in respect of certain G20 Summit issues. In the internal memorandum referred to earlier, the comment was made that the Toronto Police Service's policing "roles were not clear in the beginning [of the planning for the G20 Summit], only months into the planning process and after a number of meeting were they able to define them."⁷²

In my view, the decision by the federal government not to enter into an arrangement under section 10.1(4) of the *FMIOA* was a missed opportunity to bring clarity to the division of responsibilities between the various policing and security partners and to identify early on the legal authorities upon which each partner's operational role would be based. The Toronto Police Service sought exactly this type of clarity in March 2010, approximately three months before the G20 Summit. In an e-mail to the RCMP, the Toronto Police Service set out the following request:

Can I also ask for your assistance in another area. At our [interoperability] meetings I have asked for [a memorandum of understanding] between RCMP and Toronto Police Service for the G20. At a recent meeting it was suggested that [a memorandum of understanding] was not required.

In lieu of this, I asked for a letter requesting assistance from the RCMP and to the best of my knowledge Toronto Police Service has not received such a letter.

I think a letter of request is fundamental to the process. Especially now as we design the credentialing process for the Interdiction zone. Toronto Police Service needs to have a clear understanding of the authorities we will use to manage the Interdiction zone.⁷³

It was not until June 21, 2010 that a letter was delivered to Chief Blair by the RCMP. In the letter, the RCMP noted that it was "writing to [Chief Blair] to identify the key legal authorities on which the RCMP will be relying upon" for G20 Summit security and that "[l]egal authorities also permit the RCMP to collaborate with other police forces...in the fulfillment of its duties, including in relation to securing the perimeter [of the G20 Summit meeting site]."⁷⁴ The letter summarized certain federal legislative provisions, including provisions in the *FMIOA*. Received only five days before the G20 Summit was to begin, the letter may have provided the Toronto Police Service with some of the clarity it was seeking, but this would have been far too late in the process to be useful or to be meaningfully acted upon.

One example of the clarity an arrangement under the *FMIOA* could have brought relates to the issue of legal authority to secure the Interdiction Zone. As I will discuss in more detail in *Chapter*

⁷¹ Letter from Province of Ontario to the Government of Canada (7 May 2010).

⁷² Toronto Police Service, Untitled memorandum (22 July 2010) at 3.

⁷³ E-mail from Toronto Police Service to RCMP, "Toronto Police Service – request for personnel assistance" (14 March 2010) at 15:30 [emphasis added].

⁷⁴ Letter from the RCMP to Chief William Blair (11 June 2010, received on 21 June 2010).

10 – *Public Works Protection Act and Ontario Regulation 233/10*, the Toronto Police Service became concerned about whether it had legal authority to secure the Interdiction Zone, including the regulation of access inside and out of that zone, the search of persons and vehicles that were seeking entry to that zone, and the arrest of individuals if necessary. After it obtained legal advice on these matters, the Toronto Police Service determined it was necessary to obtain new legal powers in order to discharge this particular security function. Ultimately, this led to a request for a new regulation to be made under the *Public Works Protection Act*, R.S.O. 1990, c. P.55 – a request that was granted by the Government of Ontario. Had discussions concerning an arrangement under s. 10.1(4) of the *FMIOA* taken place early in the G20 Summit planning process, it would have become evident that the RCMP already possessed the legal authority to secure the Interdiction Zone under s. 10.1(2) of the *FMIOA*. Perhaps a different decision would have been made about which ISU partner would assume the responsibility for the Interdiction Zone and a request by the Toronto Police Service for new legislative powers would have been unnecessary.

Joint force operations of this nature are complicated and, where possible, steps should be taken to maximize the consultation between these entities. Consultation between different police services of different jurisdictions can bring clarity surrounding their respective roles in the planning and operations stages. Had it been entered into as soon as Toronto was announced as the location for the G20 Summit in December, 2009, an arrangement under subsection 10.1(4) of the *FMIOA* could have usefully set out the division of planning responsibilities to guide the federal, provincial, and municipal entities that were working to create a security framework for the G20 Summit. An arrangement could have also identified the statutory or common law authority that each policing and security partner, including the Toronto Police Service, may have needed to rely upon to perform their operational functions during the event. By specifying these basic components through an arrangement under section 10.1(4) of the *FMIOA*, the Toronto Police Service could have determined early in the planning process whether there were any gaps in its legal powers that could have compromised its ability to deliver adequate and effective policing for the Summit. If gaps were identified, there would have been more time to have developed alternative plans, identified the need for additional legal authority, or advised that a particular operational area needed to be assigned to another partner.

In turn, a discussion about an arrangement under section 10.1(4) of the *FMIOA* would have stimulated an important consultation between the Board and the Chief regarding the priorities and objectives of the Toronto Police Service in relation to the event.

Recommendation No. 12: Board should insist on *FMIOA* arrangement

Where the RCMP will be involved in an international event for which security arrangements are required, including the participation of the Toronto Police Service, the Board should encourage the federal and provincial governments to enter into an arrangement under section 10.1(4) of the *FMIOA*.

The Board should also seek an opportunity to provide input concerning the details of such an arrangement, including with respect to the policing functions the Toronto Police Service can fulfill for the event and the legal authorities on which the Toronto Police Service's involvement in the event's security will be based.

ii. Toronto Police Service's policing responsibilities for the G20 Summit

The Toronto Police Service was recognized as the "police force of jurisdiction" in Toronto with the responsibility to discharge its functions under the *Police Services Act*. In addition, the Toronto Police Service would act in support of the RCMP and its function of protecting Summit delegates.⁷⁵ The Toronto Police Service's areas of responsibility for the Summit were described in the first chapter of the Toronto Police Service's G20 Summit Operational Plans entitled "Concept of Operations":

Roles and Responsibilities

...

Toronto Police Service

The Toronto Police Service is the police force of jurisdiction in Toronto. Toronto Police Service has the responsibility to fulfil[] its mandated obligations under the 'Police Services Act' of Ontario. Through the ISU, Toronto Police Service will support the RCMP in its federally legislated mandate. During the G20, Toronto Police Service will assist in protecting the Internationally Protected Persons (IPPs) and VIPs as well as, ensuring the integrity of the Interdiction Zones (IZ) or outside perimeters of all identified G20 Toronto sites and hotels. Toronto Police Service will ensure the democratic right of individuals to demonstrate peacefully while maintaining proper security. Additional Toronto Police Service responsibilities include: crime management, traffic management, public order maintenance, business continuity, prisoner processing and community relations.⁷⁶

The determination of the Toronto Police Service's broad responsibilities for the G20 Summit extended to the decision on the particular geographic areas over which the Toronto Police Service would have policing jurisdiction. There were four security zones established for the G20 Summit: the Controlled Access Zone, the Restricted Access Zone, the Interdiction Zone, and the Outer Zone. Of the four, the Toronto Police Service assumed primary responsibility for the latter two:

⁷⁵ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 16.

⁷⁶ Toronto Police Service, *2010 G20 Summit Operational Plan*, Chapter 1: Concept of Operations (9 June 2010) at 18.

the Interdiction Zone, which was the secure area immediately outside the Restricted Access Zone, and the Outer Zone, which was an area bordered by Bloor Street West to the north, Lake Ontario to the south, Dufferin Street to the west, and Jarvis Street to the east.⁷⁷ The four zones will be described in more detail in the next section.

It would appear that the Toronto Police Service's policing responsibilities and geographic areas of jurisdiction for the G20 Summit were determined by the ISU, under the leadership of the RCMP, after Toronto was selected as the location for the event. This approach to ultimate approval of responsibilities among ISU partners aligns with the RCMP's own description of its role. In a document prepared in January 2010, one of the responsibilities attributed to the RCMP's own G20 Summit Planning Unit was to "[d]etermine the security responsibilities of partnering security agencies including...Toronto Police Service."⁷⁸ As the lead agency for all security matters related to the G20 Summit, the RCMP had ultimate approval authority over the allocation of policing responsibilities between the ISU partners. Fairly extensive consultation between all the ISU partners regarding operational details took place after the initial determination of broad responsibilities and geographic areas of jurisdiction was made.

iii. Priorities and objectives for G20 Summit security

The ISU also identified certain overall security objectives and priorities for the G20 Summit. These objectives and priorities were premised on the RCMP's responsibility to ensure the safety and security of the heads of state that would be attending the event.

A primary objective of the RCMP was to create a system that would secure and control access to the MTCC and the hotels at which the heads of state and Summit delegates would be staying. Section 10.1(2) of the *FMIOA* gave the RCMP the power to "take appropriate measures" to maintain the security of the G20 Summit, "including controlling, limiting or prohibiting access to any area to the extent and in a manner reasonable in the circumstances."

The ISU established four security zones for the G20 Summit that would contain fenced boundaries to limit or prohibit access to those zones.⁷⁹ The four zones can be described as follows:⁸⁰

- *The Controlled Access Zone:* This area encompassed the MTCC where the G20 Summit meetings were held and certain hotels where world leaders stayed during the event. The Controlled Access Zone was surrounded by a fence on the east, west, and north sides, with cameras monitoring the railway tracks that were located on the south side. Valid credentials were required to enter the Controlled Access Zone. The RCMP maintained

⁷⁷ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 31.

⁷⁸ Royal Canadian Mounted Police, *Planning Unit Operational Plan* (14 January 2010) at 11 [emphasis added].

⁷⁹ The specific location of the boundaries of these security zones was discussed by the ISU's Interoperability Management Group, of which the Toronto Police Service was a member.

⁸⁰ Section 10.1(2) of the *FMIOA* grants the RCMP the specific power to "take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances." The Toronto Police Service advised that "the [Controlled Access Zone] format came from the RCMP and was initially presented to [the Toronto Police Service] by the [RCMP Operational Lead]"; Toronto Police Service Answers to Undertakings, No. 14 (14 November 2011).

sole responsibility for security and credentialing with respect to the Controlled Access Zone.⁸¹

- *The Restricted Access Zone:* This was a slightly larger area that surrounded the Controlled Access Zone and included the rest of the hotels where the world leaders stayed during the event. The Restricted Access Zone was surrounded by its own fence. The RCMP maintained sole responsibility for security and policing within the Restricted Access Zone.⁸²
- *The Interdiction Zone:* This area extended in all directions beyond the Restricted Access Zone perimeter fence and surrounded the Restricted Access Zone and Controlled Access Zone, with the following boundaries: Wellington Street to the north, Bay Street to the east, Lakeshore Boulevard to the south, and Windsor Street to the west. This zone was divided into a north and south section, with Front Street as the dividing line. The Interdiction Zone was surrounded by approximately 3.8 kilometres of chain link fencing that, when atop concrete barriers, had a height of almost ten feet. Toronto residents who obtained security approval before the G20 Summit would have to show their approval document at a gate on the Interdiction Zone fence in order to be permitted entry into this zone. The Interdiction Zone also included the PATH system in Toronto that runs underground and connects certain buildings in the downtown core. The Toronto Police Service was responsible for the security and credentialing at the Interdiction Zone fence.⁸³
- *The Outer Zone:* This was the large area outside the Interdiction Zone that encompassed various areas, including Queen's Park, consulates, financial sites, and Toronto Police Service Headquarters. The Toronto Police Service was assigned responsibility for policing in the Outer Zone. There was no fence around the Outer Zone. The Outer Zone was divided into north and south sectors with defined boundaries, as follows:
 - (i) North: Spadina Avenue to the west, Bloor Street West to the north, Jarvis Street to the east, and King Street West from Spadina Avenue to Simcoe Street and Adelaide Street West from Simcoe Street to Jarvis Street to the south.
 - (ii) South: Dufferin Street to the west, King Street West from Dufferin Street to Simcoe Street and Adelaide Street West from Simcoe Street to Jarvis Street to the north, Jarvis Street to the east, and Lake Ontario to the south.⁸⁴

Geographically, the Interdiction Zone fence line became an important boundary between Toronto and high-security areas in which Internationally Protected Persons ("IPPs") or other Summit delegates were located. For this reason, planning documents placed an emphasis on the Toronto Police Service's "function of ensuring the integrity of the Interdiction Zones beyond the Restricted

⁸¹ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 20.

⁸² Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 21.

⁸³ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 21-4.

⁸⁴ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 24-6.

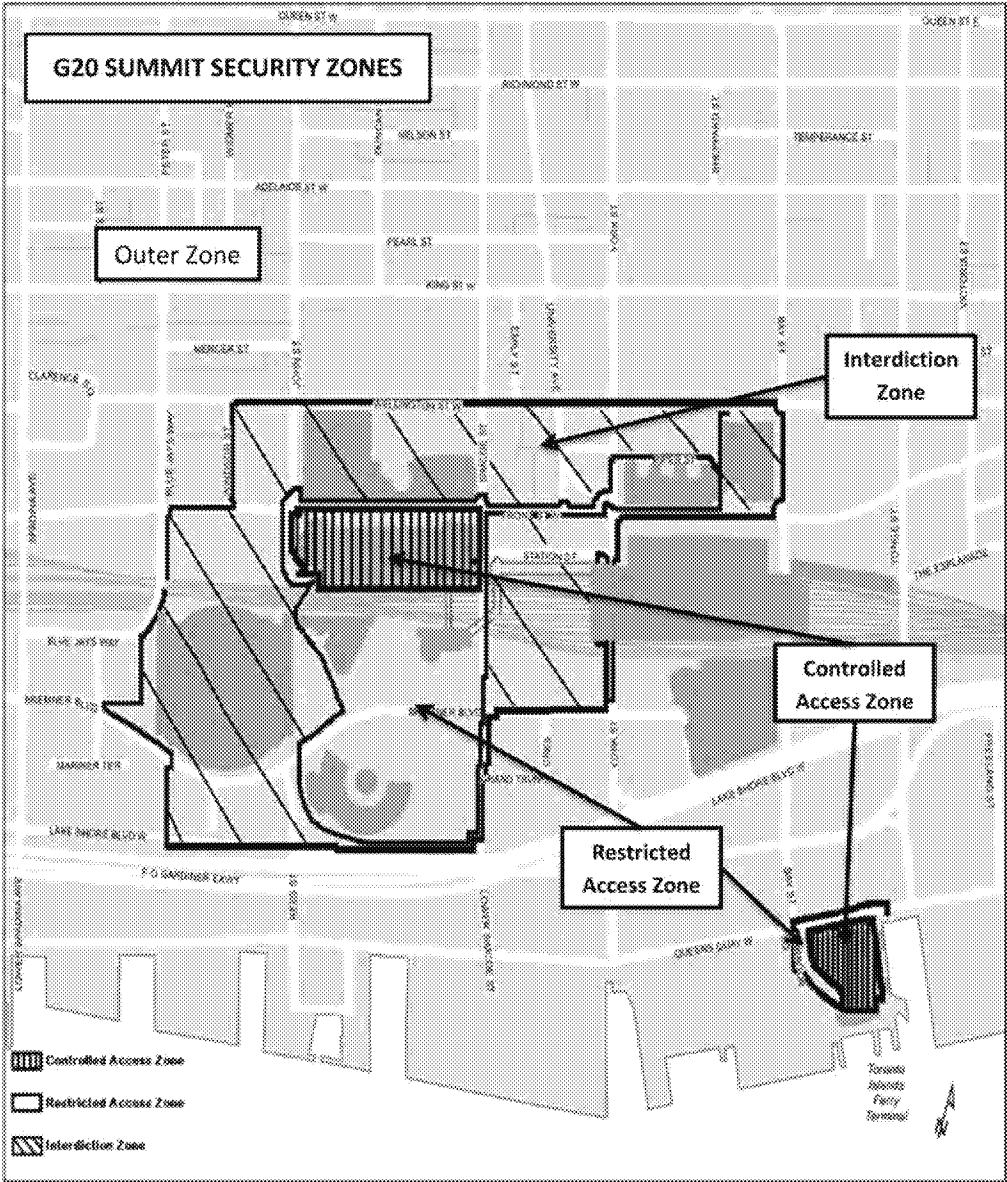
Access Zones under the protection of the RCMP.”⁸⁵ The determination that the Toronto Police Service would be responsible for the security and policing of the Interdiction Zone had implications both in terms of the Toronto Police Service’s allocation of police resources to areas outside the Interdiction Zone as well as specific tactical decisions that were made by the Toronto Police Service during the G20 Summit. I will review these matters in detail against the background of the events as they actually unfolded during the Summit in *Chapter 4 – Toronto Police Service Objectives and Priorities for the G20 Summit*.

In the end, the RCMP’s main objective for the G20 Summit was to fulfill its statutory responsibilities to ensure the safety and security of the IPPs. This required the development and implementation of a “security package” for the G20 Summit.⁸⁶ A fundamental component of this security package was how geographic areas of responsibility would be allocated as between the RCMP and the Toronto Police Service. In its capacity as the lead security agency with responsibility for the security of the G20 Summit, the RCMP ultimately approved the allocation of responsibility for the Interdiction Zone to the Toronto Police Service. The Toronto Police Service accepted this responsibility and confirmed that it would “deploy personnel to adequately and effectively secure the [Interdiction Zone] perimeter in their area.”⁸⁷

⁸⁵ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 29.

⁸⁶ “G20 Summit: Operations for the G20 Summit” – PowerPoint Presentation (18 March 2011) at slide 2.

⁸⁷ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 22.



B. DEVELOPING THE FRAMEWORK AND PLANS FOR G20 SUMMIT SECURITY

i. The Integrated Security Unit’s structure and mandate

Security for the G20 Summit required the involvement of police and security partners from various Canadian jurisdictions. The total complement for the G8 and G20 Summits was 20,974 security personnel, broken down as follows:

- 8,059 RCMP officers, including private security personnel;

- 6,200 Toronto Police Service officers (inclusive of non-Toronto Police Service officers from other Canadian jurisdictions that would be under the command of the Toronto Police Service during the G20 Summit), including 900 auxiliary and Toronto Fire Services members;
- 2,938 Ontario Provincial Police officers;
- 3,030 Canadian Forces members; and
- 747 Peel Regional Police officers.⁸⁸

Given the multi-jurisdictional nature of the security arrangements for the event and the number of partners involved, it was important to create a structure to centralize and manage the development of security plans.

The ISU was established to plan and coordinate all security-related matters for the G8 and G20 Summits. For the G20 Summit,⁸⁹ the ISU was comprised of five partners: the RCMP, the Ontario Provincial Police, the Toronto Police Service, Peel Regional Police, and the Canadian Forces. The ISU was the “central coordinating body” for security planning, operations, and demobilization activities. The intent was to ensure “better synchronization of operations and integration of capabilities” amongst the various police and security services involved in the event.

The RCMP was the lead security partner responsible for “overseeing security planning and operations as well as the coordination of operational security requirements with federal, provincial, and municipal law enforcement agencies.”⁹⁰ RCMP Chief Superintendent Alphonse MacNeil was the Division Operations Commander of the ISU and responsible for leading it. The RCMP’s leadership of the ISU included, among other matters, the provision of information to the other four ISU partners, determining what tasks the ISU needed to accomplish in the planning of security, and generally providing direction in the achievement of the ISU’s mandate. The other ISU partners were represented by their respective planning leads. Collectively, these five leads formed the Interoperability Management Group (which will be described in the next subsection).⁹¹

⁸⁸ “Meeting with the Office of the Independent Police Review Director and Toronto Police Services Board Review” – PowerPoint Presentation (7 March 2011) at slide 8; Royal Canadian Mounted Police, “Actual Deployment Numbers 2010 G8-G20 Summits” (confirmed 14 July 2010).

⁸⁹ For the G8 Summit, the North Bay Police Service was a member of the ISU and the Peel Regional Police Service was not. See Royal Canadian Mounted Police, News Release, “Integrated Security Unit Planning for a Safe and Secure G8 Summit in 2010,” (13 July 2009), available: <http://www.newswire.ca/en/story/535489/integrated-security-unit-planning-for-a-safe-and-secure-g8-summit-in-2010>.

⁹⁰ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 15; Review’s Interview with the RCMP (7 March 2011, Ottawa). The RCMP’s responsibility for G8 and G20 Summits security was assigned to RCMP ‘O’ Division, the division responsible for federal policing in Ontario.

⁹¹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 8 and 20; Review’s Interview with the RCMP (7 March 2011).

The ISU's mission aim was to "[e]nsure the [s]afety and [s]ecurity of the general public and heads of state attending the Summits in Canada, in June of 2010."⁹² To achieve this mission aim, several strategic objectives were identified for the ISU:

1. Determine all Summit and security requirements
2. Develop the concept of operations, business plan, and operational plans for Summit safety and security
3. Incorporate Summit safety and security partners in an Integrated Security Unit
4. Coordinate and focus intelligence to support Summits safety and security
5. Develop a network to facilitate liaison between local, provincial, and federal agencies
6. Develop the Information Technology systems and communications processes required for an integrated planning/operations group
7. Provide situational awareness and training for all Summit security personnel
8. Ensure the safety and well-being of our employees
9. Develop and implement a comprehensive "Transfer of Knowledge" strategy for future events⁹³

The ISU was not intended to have command and control functions during the G20 Summit.⁹⁴ Rather, it was a planning body whose principal mandate was supposed to end when the G20 Summit began.

ii. Integrated Security Unit Groups

The ISU's structure included certain committees and groups with specific areas of responsibility. Two in particular provided direction and coordination in the development of each partners' security plans: the Interoperability Management Group and the Joint Operational Planning Group.

The Interoperability Management Group was the overriding management group comprised of all ISU partner leads. The RCMP headed this group. Its mandate was to provide strategic direction to the Joint Operational Planning Group with respect to the development of operational plans and the coordination of those plans.⁹⁵

⁹² Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 18.

⁹³ "Meeting with the Office of the Independent Police Review Director and Toronto Police Services Board Review" – PowerPoint Presentation (7 March 2011) at slides 10-11; Royal Canadian Mounted Police, *Integrated Project Plan* (9 June 2010) at 7.

⁹⁴ "Meeting with the Office of the Independent Police Review Director and Toronto Police Services Board Review" – PowerPoint Presentation (7 March 2011) at slide 13.

⁹⁵ Review's Interview with the RCMP (7 March 2011, Ottawa).

The Joint Operational Planning Group was comprised of representatives from each of the ISU partners. It was a “multi-disciplinary” body that consisted of representatives who were responsible for planning, operations, and logistics within their respective organizations. The Joint Operational Planning Group was the “driver” of the planning process and provided a forum for the members of the ISU to work collaboratively to address issues that arose during the security planning for the G20 Summit. Information that had to be integrated or accounted for in the operational plans was provided by all ISU partner members of the Joint Operational Planning Group.⁹⁶

In addition, a Joint Intelligence Group was established with representatives from the ISU partners. This group coordinated intelligence gathering among several police services in the time leading up to the G8 and G20 Summits. The Joint Intelligence Group was “an integrated collections and analysis group mandated to provide strategic, operational, and tactical intelligence...responsible for anticipating threats, issuing assessments, warnings and alerts, and responding to Requests for Information.”⁹⁷ It ran undercover operations, recruited confidential informants and liaised with domestic and foreign governments and law enforcement agencies to gather information that would assist with the security of the Summit.⁹⁸

iii. Areas of planning responsibility

Each ISU partner was responsible for developing its own set of operational plans. It was important to ensure that all operational aspects were accounted for in the plans, but that no two partners created plans for the same operational area. Therefore, a High-Level Responsibility Assignment Matrix (“Matrix”) was created “[e]arly in the planning process.”⁹⁹ According to the Matrix, the ISU Commander, an RCMP Chief Superintendent, was noted as being “Accountable” for the tasks and functions among the ISU partners, which meant that the RCMP had the “authority to approve or not approve” this division.¹⁰⁰ The Matrix is Appendix “I” to this Report.

The Matrix listed operational areas for which different ISU partners were assigned responsibility to develop the plans. These included operational plans for the various security zones that had been established for the G20 Summit. The Matrix also noted what level of responsibility each ISU partner was assigned for the different operational plans.¹⁰¹ For example, the RCMP was the “Responsible Lead” for the Controlled Access Zone and Restricted Access Zone operational plans and the Toronto Police Service was the “Responsible Lead” for the Interdiction Zone and Outer

⁹⁶ “Meeting with the Office of the Independent Police Review Director and Toronto Police Services Board Review” – PowerPoint Presentation (7 March 2011) at slide 17.

⁹⁷ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 26.

⁹⁸ Review’s Interview with Chief William Blair (25 November 2011, Toronto) at 86-7.

⁹⁹ Royal Canadian Mounted Police, *Integrated Project Plan* (9 June 2010) at 8.

¹⁰⁰ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex A – High-Level Responsibility Assignment Matrix.

¹⁰¹ Toronto Police Service Answers to Undertakings, No. 3 (14 November 2011).

Zone operational plans. The “Responsible Lead” was required to develop all plans associated with the operational area assigned to it.¹⁰²

iv. Integrated planning process

Each of the ISU partners were required to create the plans that would apply to the operations it would carry out in its assigned areas of responsibility. It was then necessary to ensure the various partner plans were sufficiently integrated. The ISU used an integrated planning process “to ensure that all aspects of the security project were properly addressed using a holistic, risk-based approach and Project Management best practices.”¹⁰³

This integrated planning process enabled the ISU partners to share knowledge and experience. It also ensured that each of the individual plans could operate alongside one another without conflict. Achieving “interoperability” as between the various plans was the responsibility of the ISU’s Joint Operational Planning Group, which conducted a “gap analysis” of the different plans for this purpose.¹⁰⁴ The Interoperability Management Group provided oversight of this process.

The ISU partners collaborated during the planning process to ensure all aspects of the G20 Summit security operation were addressed. The plans were also reviewed to ensure they could function in coordination with one another and operate without conflict. To this end, the RCMP and other ISU partners had access to one another’s plans. However, the short amount of planning time available, coupled with the size and scope of the event, would have made it too difficult to achieve full integration of all operational plans. There were a select number of operational areas only, such as security for airspace and waterways, where the ISU worked to integrate different partners’ plans because more than one partner had responsibilities in that operational area.¹⁰⁵

The Matrix, referred to in the preceding section above, noted that for plans created by any of the ISU partners, it was the ISU Commander who was designated as “Accountable.” This meant that when an operational plan was completed by an ISU partner, it was the RCMP that had the “authority to approve or not approve the plans and actions for the task/function.”¹⁰⁶ In response to questioning on this point during one of our interviews, the RCMP explained that there was generally no *formal* approval required or given by the RCMP for plans created by other ISU partners that related to their sole area of responsibility.¹⁰⁷ For example, the policing of the Outer Zone was solely the responsibility of the Toronto Police Service. Consequently, the Toronto Police Service’s plan for the policing of the Outer Zone did not require any formal approval of the

¹⁰² Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex A – High-Level Responsibility Assignment Matrix.

¹⁰³ Royal Canadian Mounted Police, *Integrated Project Plan* (9 June 2010) at 8.

¹⁰⁴ “Meeting with the Office of the Independent Police Review Director and Toronto Police Services Board Review” – PowerPoint Presentation (7 March 2011) at slide 19; Royal Canadian Mounted Police, *Integrated Project Plan* (9 June 2010) at 10.

¹⁰⁵ Review’s Interview with the RCMP (22 March 2011, via telephone).

¹⁰⁶ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex A – High-Level Responsibility Assignment Matrix.

¹⁰⁷ Review’s Interview with the RCMP (22 March 2011, via telephone).

RCMP or any other ISU partner. However, we were also told that the RCMP had to have “a level of confidence” that the respective ISU partner had a plan in place.¹⁰⁸ Therefore, while there was generally no formal RCMP approval required for the Toronto Police Service’s operational plans, it is clear that the RCMP had an opportunity to review, comment, and make suggestions with respect to all operational plans. This description of the planning process is consistent with that given to us by the Toronto Police Service:

The approval process was inherent to the planning process.

The planning process was in collaboration with our ISU partners. Plans were not developed in isolation and interoperability was discussed through out [sic] the process. Additionally, the ISU had a team to review all ISU member plans to ensure interoperability throughout the planning process. Toronto Police Service had a liaison member on this team. The ISU became the central repository for all plans.¹⁰⁹

The RCMP also confirmed that where a specific area of operational responsibility required coordinated activity by multiple ISU partners, such as security motorcades, the plans for that area required approval by the ISU and, ultimately, the RCMP.¹¹⁰

v. No knowledge by the Board of the planning process

A review of the reports provided to the Board and the minutes of its meetings confirm that the Board did not receive substantive information concerning the process for developing plans for G20 Summit security and policing.

As I will explain in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*, the Board’s knowledge of the ISU and its actual role was inadequate. Certainly, the Board did not appreciate that the ISU was a planning and coordination entity that was not to be involved in command decisions made on the days of the G20 Summit. This lack of understanding of the ISU’s general role and function was apparent from our interviews with Board members. The following response provided in Board Member Judi Cohen’s interview was typical of those provided by other Board members:

Review Counsel:

Ok. What was your understanding at the time of the role of the ISU? The Integrated Security Unit.

Judi Cohen:

At the time, I didn’t have an understanding because the whole discussion about ISU came afterwards and as the event unfolded, we talked about it afterwards so where was

¹⁰⁸ Review’s Interview with the RCMP (22 March 2011, via telephone).

¹⁰⁹ Toronto Police Service Answers to Undertakings, No. 5 (14 November 2011).

¹¹⁰ Review’s Interview with the RCMP (22 March 2011, via telephone).

the call being made from? Who was making decisions and it was coming out of the ISU but even up until fairly recently it wasn't clear who it was in there?'.¹¹¹

The Board's lack of knowledge about the ISU and its role generally is a matter of concern. The ISU was the entity responsible for the planning of policing and security for the G20 Summit and the Toronto Police Service was one of five ISU partners involved in that process. The Board should have had a clear understanding of the relationship between the Toronto Police Service and the ISU. However, as Chair Mukherjee explained, the Board was provided little information on this:

Information kind of trickled down to the Board, as opposed to being provided in a detailed exhaustive manner at the beginning of the process, you know, 'Board, here is what we are going into, this is how it's going to unfold'. I mean, we had a general sense [that] this is a massive operation. It'll create a huge pressure on us and we're going to have to plan it in a hurry. At the beginning, all of us understood that our Service and our Chief was, were the lead in doing all of this planning. I do not recall when exactly the term ISU was introduced to us.

I don't think that I had a clear answer on that point. I, you know, was becoming aware of this entity called ISU and the Board had heard about the Major Incident Command Centre that had been refurbished and established over here in the building. But the extent to which the Toronto Police was going to be the decision maker in the planning process, I don't think was ever very clear to us right up to the time of the Summit.¹¹²

Further, while the Toronto Police Service may have been the "responsible lead" for the development of certain plans, the ISU and, more particularly, the RCMP, had the ultimate ability to approve or not approve those plans. As the entity "accountable" for all operational plans for the G20 Summit,¹¹³ the RCMP, through the ISU Commander, could have modified or even rejected planning decisions made by the Toronto Police Service. This was an extraordinary amount of power and the Board should have been aware of the fact that it was available to be exercised by an entity other than the Toronto Police Service. Essentially, the Toronto Police Service was subject to the planning direction of another entity and the Board was not aware of this.¹¹⁴

Throughout the months leading up to the G20 Summit, the Toronto Police Service sought to inform the Board only of certain matters related to the planning process. Even then, the information provided was devoid of the detail necessary for the Board to have a clear understanding of the planning process and that the Toronto Police Service's decision-making was subject, in effect, to the approval of the RCMP. The Toronto Police Service sought only to *inform* the Board of some details, rather than *engaging* the Board in the planning process.

¹¹¹ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 76.

¹¹² Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 109-112 [emphasis added].

¹¹³ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex A – High-Level Responsibility Assignment Matrix.

¹¹⁴ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 89.

At the same time, responsibility for ensuring the Board has a clear understanding of significant issues cannot rest with the Toronto Police Service alone. As I have explained in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service* and *Chapter 2 – Civilian Oversight in Policing*, the Board cannot remain a passive observer in its interactions with the Toronto Police Service and in relation to important matters that go to the planning and preparation for large security operations in Toronto. I appreciate that it could be difficult for members of the Board to know what questions to ask or what information to seek from the Toronto Police Service. I must note, however, that members of the Board admitted to not understanding the G20 Summit planning process, including the specific role of the ISU or where the Toronto Police Service fit within the planning structure, but at the same time, did not make any attempt to obtain detailed information that would have addressed their gap in knowledge.

Recommendation No. 13: Toronto Police Service to provide information regarding planning structure to the Board

Where the Toronto Police Service is involved in a joint operation related to the policing of a major event, the Board should be provided with detailed information and briefings concerning the planning structure, including information regarding the Toronto Police Service's role in that structure and whether planning decisions by the Toronto Police Service are subject to the approval of any other entity.

C. THE TORONTO POLICE SERVICE'S PLANNING FOR THE G20 SUMMIT

i. Planning Team

In this section, I will describe the Toronto Police Service's own structure and process for its G20 Summit planning and discuss the operational plan the Toronto Police Service ultimately developed for the event.

The Toronto Police Service originally formed its Planning Team in 2009 for the G8 Summit.¹¹⁵ Its task was to develop security and traffic plans for the International Media Centre that was to be located in Toronto during the G8 Summit in Muskoka. When the federal government announced that the G20 Summit would be held in Toronto, additional members were added to the Planning Team.¹¹⁶

The Toronto Police Service's planning for the G20 Summit was divided into five subject matter areas: (i) Investigative; (ii) Operations; (iii) Planning and Control; (iv) Logistics; and (v) Finance

¹¹⁵ Toronto Police Service, Memorandum re G8 Planning Update (13 October 2009) at 1-2.

¹¹⁶ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 35.

and Administration. Each of these five areas had their own set of specialty areas to which officers were assigned to develop plans.¹¹⁷

The Planning Team was led by an “accomplished” Toronto Police Service Superintendent who, in Chief Blair’s view, was the Toronto Police Service’s most experienced planner.¹¹⁸ The Superintendent’s role was “to set up the mission and the system of controls for the team to function effectively.”¹¹⁹ The Superintendent reported to a Staff Superintendent who could review issues and escalate matters to the Toronto Police Service Command where required. The Staff Superintendent reported up to the Toronto Police Service Project Steering Committee, which was comprised of three Deputy Chiefs who could provide “direction on issues or opportunities.” Ultimately, one Deputy Chief (now retired) was the Executive (Command) Sponsor for the Toronto Police Service and had ultimate authority for the Toronto Police Service’s G20 Summit planning.¹²⁰

ii. Toronto Police Service’s mission statement

One of the first orders of business for the Planning Team was to create a mission statement that would serve to guide the Toronto Police Service’s detailed planning work. In a document created in November 2009, the Toronto Police Service’s mission statement had already been stated as follows:

The Toronto Police Service’s mission for the 2010 G8/G20 Summits (Toronto events) is to develop, deliver, and implement integrated security plans which:

- Support the RCMP and their mandate ensuring the safety and security of the G8/G20 Summits delegations
- Provide security commensurate to the threat level and the public nature of events involved with this visit
- Ensure the safety and security of the public and law enforcement personnel
- Respect the democratic right of individuals to demonstrate and to create the right conditions for peaceful protest; and freedoms of thought, belief, opinion, expression and peaceful assembly, and
- Minimize disruption and inconvenience for Toronto residents and businesses.¹²¹

The mission statement was ultimately approved by a Toronto Police Service Deputy Chief. The mission statement was also reviewed by the RCMP for “interoperability.”¹²²

¹¹⁷ Toronto Police Service, “Project Charter and Scope Statement” at 13 (3 November 2009).

¹¹⁸ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 82.

¹¹⁹ Toronto Police Service, Untitled memorandum (22 July 2010) at 1.

¹²⁰ Toronto Police Service, “Project Charter and Scope Statement” at 4 and 14 (3 November 2009).

¹²¹ Toronto Police Service, “Project Charter and Scope Statement” at 4 (3 November 2009).

In November 2009, the Toronto Police Service created a first draft of its “Project Charter and Scope Statement.” This was a high-level planning document. In addition to the Toronto Police Service’s mission statement, the document contained:

- an overview of the Toronto Police Service’s planning objectives for the G8 and G20 Summits;
- a listing of project deliverables for which the Toronto Police Service would be responsible;
- an “Impact Analysis” that identified certain impacts on the Toronto Police Service for which adequate planning would be required, such as the redeployment of officers from regular duties to assist with the policing of the G20 Summit; and
- a summary of the policing challenges experienced previously in other jurisdictions that had hosted international summits.

The Board never received, reviewed, or discussed with the Toronto Police Service this principal planning document, including the Toronto Police Service’s mission statement contained in it.¹²³

iii. Toronto Police Service’s “Concept of Operations”

The Toronto Police Service’s “Concept of Operations” became the first of its 26-chapter Operational Plan. The Concept of Operations document provided a broad overview of the various specific plans the Toronto Police Service would be required to develop and which related to its policing function during the G20 Summit. The document:

- identified and summarized the relevant legal authorities applicable to the security and policing of the G20 Summit, including the *FMIOA* and the *Police Services Act*;¹²⁴
- provided general background regarding the G20 Summit;¹²⁵
- defined the roles and responsibilities of the RCMP and the Toronto Police Service for the policing of the G20 Summit;¹²⁶
- provided a description of the various security zones that had been established for the G20 Summit and identified which police service would be responsible for each zone;¹²⁷ and
- included a summary of the Toronto Police Service’s policing operations for the G20 Summit broken down by operational area, including zone-specific operations (e.g. the

¹²² Toronto Police Service Answers to Undertakings, No. 16 (21 February 2011).

¹²³ Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 110.

¹²⁴ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at pp. 9-12.

¹²⁵ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at pp. 16 and 17.

¹²⁶ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at pp. 18-20.

¹²⁷ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at pp. 20-26.

Outer Zone and the Interdiction Zone), specialized operations (e.g. Emergency Task Force), traffic operations, and others.¹²⁸

We were advised that it “took the full 6 months of security planning to develop a complete concept of operations and delineate the roles and responsibilities for all ISU partners.”¹²⁹ The initial draft of the Concept of Operations document was created on April 12, 2010. The document was in final form on June 17, 2010 and was integrated into the Toronto Police Service’s Operational Plans for the G20 Summit. The Board never received, reviewed, or discussed with the Toronto Police Service the Concept of Operations.

iv. Toronto Police Service’s Operational Plan for the G20 Summit

The Toronto Police Service was required to develop specific plans associated with the areas of responsibility that had been assigned to it and which it accepted.¹³⁰ With only a matter of months to assemble the plans, the task for the Planning Team was daunting:

The task of developing security plans to support the event was incredibly complex and challenging, perhaps one of the most comprehensive and challenging security operation[s] in Canadian history. There was no previous template, the G20 Summit had never been held in Toronto before and back to back G8/G20 events had never been done anywhere in the world before.¹³¹

Fortunately, many of the planning areas that were the responsibility of the Toronto Police Service for the G20 Summit aligned with the Toronto Police Service’s general, day-to-day operations.

Each of the 26 chapters provided a plan and detailed logistical information in relation to a particular operational area. It included details that were relevant to command-level officers with responsibility for making operational decisions during the G20 Summit. The following areas each had their own chapter in the Toronto Police Service’s Operational Plan and were areas in respect of which the Toronto Police Service was either the lead entity or played a supporting role to the RCMP:

1. Concept of Operations
2. MTCC Interdiction Zone
3. The PATH
4. Outer Zone
5. Westin Harbour Castle Interdiction Zone

¹²⁸ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at pp. 26-41.

¹²⁹ Toronto Police Service Answers to Undertakings, No. 12 (21 February 2011).

¹³⁰ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 85.

¹³¹ Toronto Police Service Answers to Undertakings, No. 12 (21 February 2011).

6. Marine
7. International Media Centre
8. Traffic Management
9. Motorcade Support
10. Transit Patrol
11. Parking
12. Public Order Unit
13. Mounted
14. Police Dog Services
15. Emergency Task Force
16. CBRNE [Chemical, Biological, Radiological, Nuclear, Explosives]
17. Prisoner Processing Centre
18. Public Information
19. VIP
20. Emergency Management
21. Critical Infrastructure
22. Communications
23. Logistics
24. Staging
25. Finance
26. Toronto Police Service Headquarters¹³²

In addition to information that explained the operational mandate for the Toronto Police Service to carry out in the particular area, some chapters included mission statements that were specific to the operational area the chapter was designed to address. For example, the chapter which pertained to the PATH security plan included the following mission statement:

¹³² Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Table of Contents.

The PATH Plan mission is to ensure that the underground component of the Interdiction Zone of the identified G20 2010 Summit sites are...safe and secure for the protection of the attending Heads of State, police personnel, and the public.¹³³

Chapters also included: specific procedures that had been designed for the G20 Summit;¹³⁴ a more detailed description of the specific role and responsibilities of Toronto Police Service and assisting officers deployed in the particular operational area;¹³⁵ particular information about locations, routes and geographic landmarks relevant to the operational area;¹³⁶ command and control; and communications information that was specific to the operational area.¹³⁷

Taken together, the chapters of the Toronto Police Service's Operational Plan for the G20 Summit constituted the "security package" that was to be implemented by the Toronto Police Service during its policing of the G20 Summit and set out the parameters of the Toronto Police Service's policing role in each of the identified areas.¹³⁸ The Operational Plan drew upon the ISU's and Toronto Police Service's mission statements to articulate the Toronto Police Service's own security objectives and priorities for the G20 Summit. The 26-chapter volume provided the direction and technical information required to convert the Toronto Police Service's strategic goals in each operational area into tactics which could be executed. As I mentioned above, the ISU and, more precisely, the RCMP, had ultimate authority to approve the Toronto Police Service's Operational Plan.¹³⁹ This approval did not take place through a formal or explicit process, but rather "was inherent in the planning process."¹⁴⁰

Interoperability as between the Toronto Police Service's Operational Plan and the plans of other ISU partners was discussed throughout the planning process. As well, the operational plans were tested during pre-event training exercises. In an exercise called "Trillium Guardian," which took place from May 10 – 14, 2010,¹⁴¹ the ISU partners were required to simulate their responses to mock scenarios. This was not "boots on the ground" training, but rather a table-top exercise during which each ISU partner would implement the relevant aspects of their operational plans to

¹³³ See for example Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 3: The PATH Operational Plan at 7.

¹³⁴ See for example Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 2: MTCC Interdiction Zone Perimeter Operational Plan at 27, "Appendix A – Toronto Police Service 2010 G20 Summit Interdiction Zone Access Policy and Procedure."

¹³⁵ See for example Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 4: Outer Zone (OZ) Operational Plan at 19-22.

¹³⁶ See for example Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 9: Motorcade Support Operational Plan at 18 (motorcade routes).

¹³⁷ See for example Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 12: Public Order Unit Operational Plan at 39 (command and communications).

¹³⁸ Toronto Police Service, *2010 G20 Summit Toronto Operational Plan*, Chapter 1: Concept of Operations at 19.

¹³⁹ The Joint Operational Planning Group reviewed all of the operational plans.

¹⁴⁰ Toronto Police Service Answers to Undertakings, No. 5 (14 November 2011).

¹⁴¹ Prior to "Trillium Guardian," a series of training exercises, called "Pinnacle," took place in January, March and April 2010. As well, a training exercise called "Trillium Sentry" was run in December 2009. Each of these was table-top training exercises which tested interoperability, command and control and jurisdiction issues. See internal Toronto Police Services e-mail "G8/G20 table top exercise update" (19 November 2009) at 15:31.

problem-solve a mock scenario. The purpose of “Trillium Guardian” was “to confirm a functional integrated command and coordination structure with effective information and intelligence sharing.”¹⁴² The exercise allowed each ISU partner and other government officials to work through particular aspects of their operational plans and discuss interoperability issues between the different plans. We were advised that there were no significant issues identified during the “Trillium Guardian” exercise.¹⁴³

Despite the “very tight timelines” available to the Toronto Police Service,¹⁴⁴ its Operational Plan was completed in time for the G20 Summit. Chief Blair commented that he was proud of the “extraordinary work” the Planning Team accomplished in the time that was available.¹⁴⁵ However, as discussed in Part I of this chapter, the limited time available to transition from the planning to operational phases of the G20 Summit did not permit sufficient integration of operational commanders in the planning process and did not allow for “operational exercises that would have enabled [the Toronto Police Service] to be better prepared.”¹⁴⁶

v. No consultation with the Board on the Toronto Police Service’s objectives and priorities for the G20 Summit

As I have described, the Toronto Police Service developed two key documents related to its G20 Summit policing function early in the planning process: the “Project Charter and Scope Statement” and the “Concept of Operations.”

A first draft of the “Project Charter and Scope Statement” was completed on November 3, 2009. This document provided at least some detail regarding the Toronto Police Service’s mission and objectives and also summarized historical examples of policing challenges that had been experienced at previous international summits. The Board never saw the “Project Charter and Scope Statement” and, in fact, none of its members knew of this document’s existence until they were provided with copies during the Review’s interview process.

The “Project Charter and Scope Statement” was a very useful document that could have been a springboard for discussion between the Board and the Toronto Police Service regarding the Toronto Police Service’s policing role for the G20 Summit. If the Board had been provided with this document, it could have used it as a starting point to ask questions and seek additional information. Certainly, there was sufficient detail in the “Project Charter and Scope Statement” to permit the Board to initiate a consultation with the Chief about the Toronto Police Service’s priorities and objectives for the Summit. Unfortunately, this consultation never occurred and, therefore, the Toronto Police Service never put forward to the ISU a plan that was the product of consultation between the Toronto Police Service and the Board.

¹⁴² Toronto Police Service, “Advisory Committee Meeting Results” (2 May 2010) at 1.

¹⁴³ Toronto Police Service Answers to Undertakings, No. 6 (14 November 2011).

¹⁴⁴ Toronto Police Service Answers to Undertakings, No. 4 (14 November 2011).

¹⁴⁵ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 69.

¹⁴⁶ Review’s Interview with Chief William Blair (11 November 2011, Toronto) at 70 and 73.

The same comments can be made regarding the “Concept of Operations” chapter of the Toronto Police Service’s Operational Plan. The content of this document would have enabled the Board to understand the specific roles and functions the Toronto Police Service was responsible for executing during the G20 Summit. However, as I have explained, the Board never had this understanding and, therefore, was never in a position to evaluate whether the Toronto Police Service could fulfill its roles and functions adequately and effectively.

In our interview with Chief Blair, we asked why these planning documents had not been provided to the Board. The Chief responded that his decision concerning what information to provide the Board was based on past practice and what he determined the Board required to fulfill its function.¹⁴⁷ Chief Blair also noted that he could not recall any instance in which the Board asked for additional information and there was a refusal to provide it. According to the Chief, the Board “did not inquire into operational matters in any of the discussions that I had, that I can recall.”¹⁴⁸ My interviews with other Board members and a detailed review of the Board meeting materials confirm that the Board did not seek specific information about operational matters. In fact, even when members of the Board had questions or were unclear about certain matters, there is no evidence of any effort to pursue those matters and obtain responses that were available at the time.

It would seem clear that the Board and Chief were conducting their interactions according to the invalid notion that matters of policy and operations were to remain divided, with policy being the concern of the Board and operations being the sole concern of the Chief. However, as I have explained in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service* and *Chapter 2 – Civilian Oversight in Policing*, information relevant to determining the Toronto Police Service’s policing priorities and objectives, which can include operational information, is precisely one type of information that must be shared with the Board and then made the subject of consultation between the Board and chief of police. The “Project Charter and Scope Statement” and “Concept of Operations” documents should have been provided to the Board at the earliest possible opportunity. Without the information in these documents, and without even the knowledge that this information existed, the Board’s oversight function was seriously impaired.

D. CONCLUSION

The decision to host the G20 Summit in Toronto immediately following the G8 Summit in Muskoka was made by the federal government in isolation from the Toronto Police Service, the Board and the City of Toronto. Only after that decision and the decision to hold the G20 Summit meetings at the MTCC were formally announced could preparations for the largest security event in Canadian history properly begin. This left the Toronto Police Service with only one-quarter of the time that would normally be available to prepare for an operation of this nature.

No reason has been advanced explaining why the Toronto Police Service and the Board were not consulted throughout the process leading up to the final decisions being made about location and

¹⁴⁷ Review’s Interview with Chief William Blair (15 November 2011, Toronto) at 20-1.

¹⁴⁸ Review’s Interview with Chief William Blair (15 November 2011, Toronto) at 21.

venue. While public announcements may need to be deferred, the partners who will ultimately bear the brunt of the policing and security for the G20 Summit should not have been excluded from the federal government's discussions and decision-making process. The involvement of the Board and the Toronto Police Service in this process would have resulted in better informed partners, could have ensured that important planning issues and concerns were addressed early in the process, and would have given the Toronto Police Service more time to plan for the event itself.

Instead, the federal government's decision to hold the G20 Summit at the MTCC in Toronto was presented to both the Toronto Police Service and the Board as a *fait accompli*. Moreover, the need to wait for the federal government to make official announcements in December 2009 and then in February 2010 delayed the Toronto Police Service's planning for the event and meant that there was an incredible amount of pressure to get the Operational Plan ready and in place once the announcements were finally made.

The Toronto Police Service played a central role in developing certain elements of the framework and plan for the policing of the event. The need to acquire equipment and resources meant that the City of Toronto had to provide funds in the tens of millions of dollars without any guarantees from the federal government regarding reimbursement. Moreover, aside from the rush to complete final planning documents, the amount of time available meant that those who would have command authority during the event were not sufficiently involved in the development of the plans they were going to implement. The hallmarks one would expect to see in putting together a major international security event – deliberation, cooperation, and sufficient time to plan – were absent.

The short time for planning the Toronto Police Service's policing for the G20 Summit also impaired the civilian oversight relationship between the Toronto Police Service and the Board. The Board was left without a clear sense of the framework and plan for the policing of the Summit. The Board did not clearly understand the function of the ISU or the Toronto Police Service's specific role within it. The Board also did not have a sense of the legal framework that governed the event or the possibility of clarifying the roles, responsibilities, and legal authority of each of the policing partners through an arrangement under the *FMIOA*. Rather than leading a consultative process with the Chief, significant matters were presented to the Board as "done deals," with decisions already having been made.

In effect, the Board became a mere bystander in a process it was supposed to lead. As one Board member put it, "[w]e weren't in charge of our own house."¹⁴⁹ In *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, I will expand on the Board's responsibility to have regulated the flow and amount of information the Toronto Police Service provided to the Board. I recognize that the environment created by the reduced time for planning was a prominent factor that affected the depth of interaction between the Toronto Police Service and the Board during the planning process. It was a factor in the Board not being even aware of issues or decisions that could possibly have prompted questions or requests for further information. It also

¹⁴⁹ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 81.

meant that to a great extent, the Board's civilian oversight function in relation to the Toronto Police Service's policing of the G20 Summit was virtually non-existent.

CHAPTER FOUR: TORONTO POLICE SERVICE OBJECTIVES AND PRIORITIES FOR THE G20 SUMMIT

A. SETTING THE TORONTO POLICE SERVICE'S OBJECTIVES AND PRIORITIES

In *Chapter 3 – Planning and Policing Framework for the G20 Summit*, I discussed the manner in which policing responsibilities for the G20 Summit, including those of the Toronto Police Service, were determined. In this chapter, I shall continue with my consideration of the application of Term of Reference 1(b),¹ and shall examine the determination of particular objectives and priorities for policing the G20 Summit to the Toronto Police Service by the Integrated Security Unit (“ISU”), of which the Royal Canadian Mounted Police (“RCMP”) was the lead agency.

As I outlined in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service* and *Chapter 2 – Civilian Oversight in Policing*, the Toronto Police Services Board (“Board”) is responsible for setting objectives and priorities for the Toronto Police Service after consultation with the chief of police. This obligation arises from s. 31(1)(b) and s. 41(1)(a) of the *Police Services Act*.² Certainly, the policing of the G20 Summit was a “critical point” (as I have defined that term in *Chapter 2 – Civilian Oversight in Policing*) that should have led to extensive consultation between the Board and the chief of police. On the basis of this consultation, the Board could have set objectives and priorities for the Toronto Police Service’s work during the event. However, as I explained in the preceding chapter, the Toronto Police Service’s objectives and priorities were, in fact, set by the ISU.³

My review of the record confirms that the Toronto Police Service’s operational planning for the G20 Summit emphasized the protection of the Interdiction Zone fence. As a result, policing resources that had been difficult to secure were allocated to the Interdiction Zone at the expense of the rest of the city. This allocation of resources left the Toronto Police Service unable to manage effectively the violence and property damage that unfolded in the city which began on the afternoon of Saturday, June 26, 2010.

¹ Term of Reference 1(b): A review of the role that the Toronto Police Service played in developing the framework and plan for policing the G20.

² I note that paragraph 8 of Board Policy – Chief of Police (approved 22 March 2007, amended 15 November 2010) states that “[t]he Chief of Police will develop priorities and objectives in consultation with the Board.” That paragraph of the policy is inconsistent with s. 31(1)(b) of the *Police Services Act*, which grants the Board, and not the chief of police, the authority to establish objectives and priorities. Obviously, section 31(1)(b) of the *Police Services Act* governs.

³ Review’s Interview with Chief William Blair (15 November 2011, Toronto) at 84.

B. NO INVOLVEMENT BY THE BOARD IN SETTING PRIORITIES AND OBJECTIVES

While the ISU was determining areas of policing and geographic responsibility and assigning responsibilities to the Toronto Police Service, the Board was not involved or even informed. The Board was generally aware that the Toronto Police Service would support the RCMP in terms of security for the G20 Summit,⁴ but no specific facts concerning the broad areas of responsibility or the geographic zones that had been assigned to the Toronto Police Service were provided to the Board. In other words, the Toronto Police Service was required to execute certain policing functions during the largest security event in Canadian history, but the body “responsible for the provision of adequate and effective police services”⁵ in Toronto with the responsibility for overseeing the Toronto Police Service did not have an understanding of what those functions were. Without this understanding, the Board was unable to make any sound assessment of whether the Toronto Police Service was in a position to fulfill these functions in an “adequate and effective” manner.⁶

The following excerpt from Chair Mukherjee’s interview with the Review emphasizes the absence of any consultation between the Board and the Chief or of any understanding by the Board concerning the Toronto Police Service’s role at the G20 Summit:

Chair Mukherjee:

Initially, the dearth of information meant that the, that as a group, we had no comprehension of what this meant, what were the various ways in which this will affect us. *What would be the specific role of [the] Toronto Police Service?* I think everybody was looking for more information in order to be able to decide whether some special measures or actions were needed by the Board...

Review Counsel:

And, again, generally speaking, and we’ll get into some specifics shortly, but was there any discussion at the outset, or close to the outset, once the Board came to know about the G20 of the nature of the policing that would be required for the Summit by the Toronto Police Service?

Chair Mukherjee:

I would say no. I don’t think the Board understood. I mean, again, beyond the general sense that there’ll be leaders to be protected and there will likely be protests and demonstrations, *I don’t believe there was any understanding of the full scope of policing that this would involve, or the nature of policing that would be involved.*⁷

⁴ Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service” at 2.

⁵ *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(1).

⁶ *Police Services Act*, s. 31(1).

⁷ Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 102 [emphasis added].

In the earliest days of the planning for the G20 Summit, a pattern was followed in which the ISU, under the leadership of the RCMP, defined certain priorities, objectives, broad responsibilities, and geographic jurisdiction for the policing of the event and the Toronto Police Service adopted them. The Board was merely advised about general aspects of the Toronto Police Service's responsibilities at various points in time leading up to the event itself, without any specifics. For example, in a report by Chief Blair to the Board in January 2010, he stated:

Toronto Police Service will assist in protecting [Internationally Protected Person(s) (Foreign Diplomats)] and VIPs as well as securing the outside perimeter of the meeting venue and other sites, as well as identified hotels...Meeting our objective of supporting the RCMP while ensuring [Toronto Police Service] business continuity is resource intensive.⁸

It is clear that early in the planning stage, the Toronto Police Service adopted the objectives as defined by the ISU. However, at no point during the months of planning before the event did the Chief engage the Board in a consultation about these objectives and priorities. Ultimately, this resulted in the Board never being clear, before the G20 Summit, about what the allocation of policing responsibilities as between the different ISU partners was going to be and, in particular, what responsibilities the Toronto Police Service had agreed to assume:

So you kind of got the sense that this is going to be profoundly fluid, as a result the fence is probably going to get bigger and the protection zone is probably going to expand to create as much operational flexibility as possible so stop trying to understand it because you're not going to understand it. Just get on with making sure your businesses and residences get home safely. And, that became a bigger priority for me than anything that was happening inside the [Board] because you got the sense that [the Board] wasn't in charge. [The Board] wanted some clarity around the jurisdiction, they knew they were going to be held to account for whatever went wrong, they knew they had certain responsibilities outside the fence, that part was certain *but it was constantly growing and shrinking and changing shape so you just gave up trying to understand it because what was the point.*⁹

C. THE EMPHASIS ON PROTECTING THE INTERDICTION ZONE FENCE

i. Prioritizing the Interdiction Zone fence

The Interdiction Zone was a buffer between the G20 Summit site, controlled by the RCMP, and the rest of the city.¹⁰ The significance of this buffer to the security of G20 Summit site coupled with the ISU's focus on the protection of the Internationally Protected Persons ("IPPs") created a preoccupation with the Interdiction Zone fence. This preoccupation by the Toronto Police Service

⁸ Report from Chief William Blair in Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting – Impact on the Toronto Police Service" at 2-3.

⁹ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 47 [emphasis added]. See also Review's Interview with Judi Cohen (12 September 2011, Toronto) at 77.

¹⁰ See the diagram of the various G20 Summit security zones in *Chapter 3 - Planning and Policing Framework for the G20 Summit*.

manifested itself in decisions concerning the allocation of resources, specific deployments, and, ultimately, a policing vacuum in the Outer Zone:

[I]t became very quickly apparent that the role of the [Toronto Police Service] was to protect the fence and when you asked about ‘well, who is going to protect the storefront or who is going to do this or that?’ the police said ‘we will do what we can to help you but our priority is to make sure that no one gets across that fence’...and I certainly know, I said it publicly, that my concerns were that everything was aimed at protecting the fence. Nothing was aimed at protecting the city.¹¹

The considerable emphasis on maintaining the integrity of the Interdiction Zone during the G20 Summit is understandable. As I have explained in *Chapter 3 – Planning and Policing of the G20 Summit*, under the *Foreign Missions and International Organizations Act*, the RCMP “has the primary responsibility to ensure the security for the proper functioning of any intergovernmental conference” and “may take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances” to carry out this important responsibility. However, despite this responsibility and the powers given to the RCMP by Parliament, I have found no evidence that at any point during the planning for the G20 Summit there was any consideration given to the RCMP, rather than the Toronto Police Service, assuming responsibility for the command and policing of the Interdiction Zone.

ii. Toronto Police Service resource deployment

The preoccupation with ensuring the integrity of the Interdiction Zone fence also affected the deployment of Toronto Police Service resources in the Interdiction Zone and the Outer Zone.¹²

The primary responsibility of officers deployed to the Interdiction Zone was to control the flow of traffic in and out of, and generally police, this area. According to the chapter of the Toronto Police Service operational plan concerning the Interdiction Zone, 1,154 officers were to be deployed to the Interdiction Zone during the days of the G20 Summit.¹³ A number of these officers were public order unit officers.¹⁴

During the days of the Summit, in addition to the resources specifically allocated to the Interdiction Zone, the Toronto Police Service deployed many of its Outer Zone officers at or near the Interdiction Zone fence. Those officers remained near the fence on Saturday, June 26 despite the violence and property damage that was taking place elsewhere in the city. Officer notes made during the G20 Summit confirm that the Toronto Police Service’s focus was protecting the fence:

[Major Incident Command Centre] strategy to keep crowd away from fence.¹⁵

¹¹ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 50.

¹² Review’s Interview with Chief William Blair (25 November, 2011, Toronto) at 29.

¹³ Toronto Police Service G20 Summit Operational Plan, Chapter 2 – MTCC Interdiction Zone Perimeter Operational Plan, at 9.

¹⁴ Toronto Police Service G20 Summit Operational Plan, Chapter 2 – MTCC Interdiction Zone Perimeter Operational Plan, at 8.

¹⁵ RCMP Scribe Notes (26 June 2010) at 16:29.

[L]eave units on fence but get them in a line.¹⁶

OZ – plan to secure fence.¹⁷

In its *After-Action Review*, the Toronto Police Service provided additional confirmation of its focus on the fence:

The [Public Order Unit] officers deployed in support of the day's events were broken down into five sections. The primary POU deployment was along Richmond Street West to prevent demonstrators from getting to the security fence surrounding the G20 Summit site.¹⁸

[June 26] 21:30: POU sections and other officers were deployed between the protestors and the fence itself and the crowd did not engage with the police at this time.¹⁹

[June 26] 21:36: POU sections were directed to sweep the crowd eastbound along the fence line, decreasing their proximity to the G20 Summit site.²⁰

It is clear that the Toronto Police Service's operational decision making, which flowed directly from its priority to protect the Interdiction Zone, caused it to make decisions that detracted from its ability to police the rest of the city.

iii. The breakdown in policing the Outer Zone

The violence and property damage that occurred beginning in the afternoon of June 26 has been extensively documented in the Toronto Police Service's *After-Action Review* and the Office of the Independent Police Review Director's *G20 Systemic Review Report* ("OIPRD Report"),²¹ and I shall not repeat that information here. These reports and my own review of the record make clear that during the afternoon of June 26, the Toronto Police Service was unable adequately and effectively to manage the violence and property damage taking place in the Outer Zone.²²

In his interview, Chief Blair agreed that the allocation of police resources to the Interdiction Zone impaired the Toronto Police Service's ability to deploy much-needed officers to an Outer Zone that had grown increasingly out of control:

¹⁶ Toronto Police Service Scribe Notes (26 June 2010) at 19:53.

¹⁷ Toronto Police Service Scribe Notes (27 June 2010) at 04:30.

¹⁸ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 16.

¹⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 25; Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, May 2012) at Chapter 3.

²⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 25.

²¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, May 2012).

²² Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 18-22. In addition, the Toronto Police Service Incident Commander Scribe Notes of 26 June 2010 include two entries that show a clear order was given for officers to move out of areas where significant violence and property damage was taking place: "15:55 → All officers off Yonge St." and "15:56 → TAC – Put over band, all [police constables] off Yonge St.": Toronto Police Service Scribe Notes (26 June 2010) at 15:55 and 15:56. It is not clear what the underlying purpose of these orders was.

Review Counsel:

Is it fair to say that because the Toronto Police Service was tasked with protecting the Summit site, it impaired its ability to police the Outer Zone the way in which it otherwise would have?

Chief Blair:

Our information coming into the G20 was [that] the primary target of those who were coming intent on destruction was the Summit [site]. And I think clearly all the preparations reflect that, the fences that were built, the resources that were deployed, were based on certain assumptions and intelligence that that was the primary target and certainly there were competing priorities...I believe that when those who had come to engage in criminal behavior were unable to penetrate the Summit site, they turned their criminal intent elsewhere and they turned it on the City and that necessitated a redeployment of resources and there was, I think, concern that part of what was taking place away from the Summit site might have been a tactic to create a vulnerability around the Summit site, and in an effort to strike a balance between both our responsibility to protect Toronto and its citizens and the Summit site, those are the competing interests in striking that balance did, *I think "impair" may not be the wrong word, but certainly there were many different parts of the city that needed to be protected.*²³

The Toronto Police Service had a statutory responsibility to police the City of Toronto during the G20 Summit.²⁴ Given this considerable responsibility, it was a mistake for the Toronto Police Service to prioritize policing the Interdiction Zone during the event. Possibly the most concrete evidence of this mistake was the significant redeployment of ISU resources in the early morning hours of June 27.

iv. The redeployment of resources to the Outer Zone

In the early afternoon of June 26, there were multiple events that made the Outer Zone unsafe. The largest organized demonstration of the weekend was underway, but Black Bloc members were observed in the crowds. Some of those Black Bloc members were observed with items that the Toronto Police Service were concerned could be used as weapons. Beginning at 2:00 p.m., there were reports that members of the Black Bloc were attempting to overtake the demonstration. Shortly thereafter, officers and individuals in the crowd began to clash. Some members of the crowd caused property damage to stores and private businesses along Yonge Street, Queen Street, and nearby areas. Several police cars were vandalized.²⁵

At 3:04 p.m., the Toronto Police Service requested that Ontario Provincial Police ("OPP") resources be redeployed from the G8 Summit site in Huntsville to Toronto.²⁶ At 5:39 p.m., the

²³ Review's Interview with Chief William Blair (25 November, 2011, Toronto) at 29 [emphasis added].

²⁴ *Police Services Act*, ss. 4(1), (2), 31(1)(a) and 41(1)(a).

²⁵ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 16-22.

²⁶ Toronto Police Service Scribe Notes (26 June 2010) at 15:04.

Toronto Police Service requested that the RCMP take over command of the Interdiction Zone so that the Toronto Police Service could redeploy its resources to the Outer Zone.²⁷

The Toronto Police Service G20 operational plans did not contemplate a large reallocation of resources from one zone to another or the transfer of command from one ISU partner to another. Three specific consequences flowed from this planning gap. First, the Toronto Police Service was forced to organize a significant redeployment of 673 officers from the Interdiction Zone to the Outer Zone in a matter of hours.²⁸ This necessitated identifying the officers that would be redeployed, determining how to organize those officers, assigning commanding officers, and arranging all related logistics. Second, the OPP and RCMP officers that were redeployed from the G8 Summit site in Huntsville had not received any training with respect to policing the Interdiction Zone.²⁹ Finally, the reallocation of resources and the transfer of command of the Interdiction Zone to the RCMP took 12 hours to complete.³⁰

In planning for the G20 Summit, the ISU expected a certain level of violence and property damage at the event.³¹ The Toronto Police Service recruited additional police officers from 28 other police forces to ensure that it had sufficient resources to adequately police the Interdiction Zone and the Outer Zone. Given that violence, property damage, and other challenges were reasonably anticipated by the Toronto Police Service, a contingency plan for the reallocation of resources should have been prepared in advance of the G20 Summit. Actions that made vital resources available only once control of the Outer Zone had already been lost necessarily lacked the ability to prevent this loss of control in the first place.

v. “Own the streets”

The Toronto Police Service recognized it had lost control of the Outer Zone and desired to regain this control quickly.³² As a result, instructions were given to “own the streets” and “as soon as [you] see groups of people, arrest them.”³³

The Toronto Police Service’s inability to manage the crowds, violence, and property damage effectively on the afternoon of June 26 led to a heavy-handed response in the evening and into the following day. The details of the Toronto Police Service’s response have been extensively reviewed in the OIPRD Report.³⁴

²⁷ Toronto Police Service Scribe Notes (26 June 2010) at 17:39.

²⁸ Toronto Police Service, “Immediate Action Plan: Redeployment of Interdiction Zone Resources 2010 06 26: 02:47 Hours”; Toronto Police Service Scribe Notes (26 June 2010) at 03:06.

²⁹ RCMP Scribe Notes (26 June 2010) at 17:23.

³⁰ Toronto Police Service Scribe Notes (26 June 2010) at 17:39; Toronto Police Service Scribe Notes (27 June 2010) at 05:31.

³¹ Toronto Police Service, “Project Charter and Scope Statement” (3 November 2009) at 5-6.

³² Toronto Police Service Scribe Notes (27 June 2010) at 04:30 (“[g]ot control of the streets in 4 hours”).

³³ See for example Toronto Police Service Scribe Notes (26 June 2010) at 04:50.

³⁴ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, May 2012) at Chapters 3 and 5-8.

It is true that there was a breakdown in the Toronto Police Service's ability to manage the challenges in the Outer Zone. As I have discussed, a principal cause of this breakdown was the emphasis the Toronto Police Service placed on keeping the Interdiction Zone fence secure. Had this emphasis been balanced against the need to adequately and effectively police the Outer Zone, different decisions with respect to deployment, resource allocation, and specific responses may have been made. A more balanced approach to the Toronto Police Service's objectives and priorities for the G20 Summit was required and could have minimized the possibility of the breakdown in the first place.

D. THE BOARD'S ROLE IN SETTING OBJECTIVES AND PRIORITIES

With respect to the policing of the G20 Summit by the Toronto Police Service, a combination of little time and a Board that did not assert its oversight role resulted in a planning error. The ISU, under the lead of the RCMP, set certain objectives and priorities that the Toronto Police Service accepted. This, in turn, influenced the specific plans that the Toronto Police Service developed for the G20 Summit. In particular, the assignment of responsibility to the Toronto Police Service for securing the Interdiction Zone resulted in an emphasis on protecting that zone's fence. This emphasis led to decisions by the Toronto Police Service to deploy a significant amount of its resources in the Interdiction Zone.

The Toronto Police Service's focus should have been on policing the Outer Zone. Adequate and effective policing of the City of Toronto is a requirement of the *Police Services Act*. However, in accepting the objective of securing the Interdiction Zone and making this a policing priority, the Toronto Police Service left the Outer Zone exposed to some of the incidents of violence and property damage that have become the unfortunate images of the G20 Summit in Toronto.

Proper consultation between the Board and the Chief could have prevented this priority and objective-setting error. With sufficient information, the Board may have identified the emphasis placed on securing the Interdiction Zone and, consequently, highlighted the need to make the Outer Zone the Toronto Police Service's first priority. This consultation may then have led the Toronto Police Service to reconsider its deployment of resources and, in particular, the deployment of Public Order Unit officers to the Interdiction Zone. In turn, the RCMP may have re-evaluated the allocation of responsibilities among ISU partners and decided it was appropriate for it to assume command of, and deploy its resources to, the Interdiction Zone from the start of the G20 Summit. Of course, once the Board sets the Toronto Police Service's priorities and objectives, the chief determines how to achieve them operationally.

CHAPTER FIVE: COMMAND AND CONTROL

A. THE G20 SUMMIT COMMAND AND CONTROL STRUCTURE

The subject matter of this chapter is set forth in paragraph 1 (c) of the Terms of Reference, which reads:

1 (c) A review of the role played by the Toronto Police Service in the command structure for the policing of the G20, including whether the fact that a number of other police agencies and security agencies were involved with the Toronto Police Service impacted on the Toronto Police Service delivery of police services or created complications in the command structure during the G20.

The more complex a police operation is the more essential it is that all those responsible for any role in it have a clear understanding of the scope of their authority and responsibilities. The governing document that addresses this purpose should be clear, comprehensive, and sufficiently detailed.

The basic document respecting policing responsibilities at the G20 Summit meeting in Toronto in June 2010 was the Command and Control (C2) Document (“C2 document”) dated March 25, 2010, last amended June 3, 2010, and approved June 17, 2010.¹ The C2 document was the work product of the Integrated Security Unit (“ISU”), which I have described in *Chapter 3 - Planning and Policing Framework for the G20 Summit*.

i. Responsibilities of the Toronto Police Service and the Royal Canadian Mounted Police in the command and control structure

Before I describe some of the details of how the structure was intended to be applied on the ground as far as the decision-making was intended to work, it is helpful to set out the C2 document’s general description of the responsibilities of the two most important security partners, as far as this Review is concerned: the Royal Canadian Mounted Police (“RCMP”) and the Toronto Police Service.

Following an overview of the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 (“*FMIOA*”), which, as I have described in a previous chapter, was a source of the RCMP’s powers and responsibilities for policing at the G20 Summit, the C2 document included a statement that described the RCMP’s specific mandate:

¹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010).

The RCMP, as the lead security agency, is mandated to provide protection to the visiting [Internationally Protected Person(s) (Foreign Diplomats)] and security of the Sites. The RCMP will also provide support assistance to its policing partners. These services will be provided under the direction of the UCC [Unified Command Centre] Incident Commander. If a critical incident or terrorist activity occurs during the G8 or G20 Summit that would constitute a threat to the security of Canada or to an IPP, the UCC will ensure that immediate actions are taken to safeguard life and property.

In accordance with the Security Offences Act, the RCMP will be responsible for the operational resolution of the incident subject to the policy direction of the Government of Canada. The RCMP will also ensure, through the appropriate Government agencies/departments/services, that the National Counter Terrorism Plan is implemented.

The RCMP will ensure the democratic right of individuals to demonstrate peacefully while maintaining proper security.²

The Unified Command Centre (“UCC”) referred to in the above passage was the highest level command centre for the G8 and G20 Summits. I shall, shortly, describe the various command centres that operated during the event.

The C2 document, after referring to the role of the Canadian Forces, then, in contradistinction to the federal responsibility, referred to the responsibilities of the Ontario Provincial Police (“OPP”), the Toronto Police Service, and the Peel Regional Police. It then set forth the following paragraph to describe the Toronto Police Service’s responsibilities during the G20 Summit:

The Toronto Police Service (TPS) is the police force of jurisdiction in Toronto. TPS has the responsibility to fulfill its mandated obligations under the ‘Police Services Act’ of Ontario. Through the ISU, TPS will support the RCMP in its federally legislated mandate [which is stated above]. During the G20, TPS will assist in protecting the Internationally Protected Persons (IPP’s) and VIP’s, as well as ensuring the integrity of the Interdiction Zones (IZ) or outside perimeters of all identified G20 Toronto sites and hotels. TPS will ensure the democratic right of individuals to demonstrate peacefully while maintaining proper security. Additional TPS responsibilities include: crime management, traffic management, public order maintenance, business continuity, prisoner processing and community relations.³

ii. The Steering Committee, command centres, and sites

As its top line, the structure included the National Operations Centre, the Government of Canada, and the Federal Government. I have no information that suggests that these three entities had any involvement in operations during the G20 Summit and I will not comment on them further.

The next line of the “ISU C2 Structure” refers to the Steering Committee and, below it, the UCC with the RCMP Incident Commander in charge. I turn now to describe the Steering Committee, the UCC, and significant components of the command and control structure for the G20 Summit.

² Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 15-16.

³ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 16.

a. Steering Committee

The C2 document described the Steering Committee as a body responsible to “provide senior executive oversight during the G8 and G20 Summits. This joint committee comprises senior officers (or their official designates) from the RCMP, OPP, [Toronto Police Service], [Peel Regional Police] and [Canadian Forces].”⁴ The Steering Committee was not “a decision making body within the chain of command.”⁵ Its general role was to be informed of decisions made at various levels of the command structure, with one exception: it had the authority to recommend that the Federal Government implement the National Counter Terrorism Plan and the Canadian Forces Plan.⁶

b. Unified Command Centre

As I have said, the body immediately below the Steering Committee in the hierarchy was the UCC. It was described in the C2 document as follows:

Unified Command Centre (UCC) will be the highest level of command and control for the G8 and G20 Summits. It will be comprised of Commanders from all participating agencies/departments/services/forces. The RCMP Incident Commander will assume the role of the overall Commander. The structure of the UCC will facilitate comprehensive information flow to the RCMP Incident Commander.

Unified Command provides all agencies/departments/services with geographic or functional jurisdiction for an incident, the opportunity to manage the incident by establishing a common set of objectives and strategies. Agencies/departments/services will not relinquish their authority, responsibility, or accountability but will contribute to the command process by determining overall objectives, planning jointly for operational activities while conducting integrated operations and maximizing the use of all assigned resources.⁷

Appointed commanders from each of the five ISU partners were situated in the UCC.⁸

c. Area Command Centres

The next entities in the command structure were the Area Command Centres. There was one for Muskoka (G8 Summit) and another for the Greater Toronto Area (G20 Summit), which was located at Lester B. Pearson International Airport.⁹ It was most frequently referred to as the Toronto Area Command Centre (“TACC”). These Area Command Centres served as a link to the UCC. Any policing activities, requests for specific resources, and information concerning the

⁴ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 20.

⁵ 2010 G8/G20 Summits Briefing: Executive Steering Committee, 3rd Session (8 December 2009) [Powerpoint] at 5

⁶ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex B – Levels of Authority – Decision Making, 2010 Summits, p. 1.

⁷ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 20-21.

⁸ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 28.

⁹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 23.

movement of Internationally Protected Persons (“IPPs”) were to flow through the Area Command Centres.¹⁰ The Area Command Centres were to provide “situational awareness” to the UCC.¹¹

d. Major Incident Command Centre

Command and control of all Toronto Police Service resources, including external officers recruited from other police services, was to be exercised by the Major Incident Command Centre (“MICC”), which was located at Toronto Police Service Headquarters. The role of the MICC was described in the C2 document as follows:

The (MICC) will operate during the G8 but will be exclusive to G20 Summits issues relating to the Toronto Police Service. The MICC will be led by [Toronto Police Service] Incident Commanders and located in the City of Toronto. ISU liaison officers/cells will source appropriate Summit related information to the Area Command.¹²

The MICC is the central point of command, control, communication and information for the Toronto Police Services. The MICC Incident Commander, will have a full perspective of all resources under the Command of the [Toronto Police Services], and tactical control of those resources, in its function of ensuring the integrity of the Interdiction Zones beyond the Restricted Access Zones under the protection of the RCMP. Additionally the MICC will be responsible for the continuity of policing services throughout the City of Toronto and liaising with the City’s Emergency Operations Centre (EOC). The MICC will maintain continuous communications and shared operational awareness with the Area Command Centre through the Event Management System, Situation Board and other communications as appropriate.¹³

e. Site commanders

The last level of “authority” with respect to the Toronto Police Service related to the “[Toronto Police Service] Site”:

[Toronto Police Service] site commanders will be in tactical control of foot, bicycle, and mobile assets in the [Interdiction Zone], the Path (which runs under both the [Interdiction Zone] and [Outer Zone]) and the [Outer Zone], being supported by Public Order Sections, and under the operational direction of the MICC.¹⁴

The complete hierarchy as far as the Toronto Police Service was concerned, was a structure from top down, of the UCC, the TACC, the MICC, and, possibly, specific Toronto Police Service sites. The diagram of the structure, reproduced earlier in this chapter, shows no direct line of

¹⁰ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 29.

¹¹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 29.

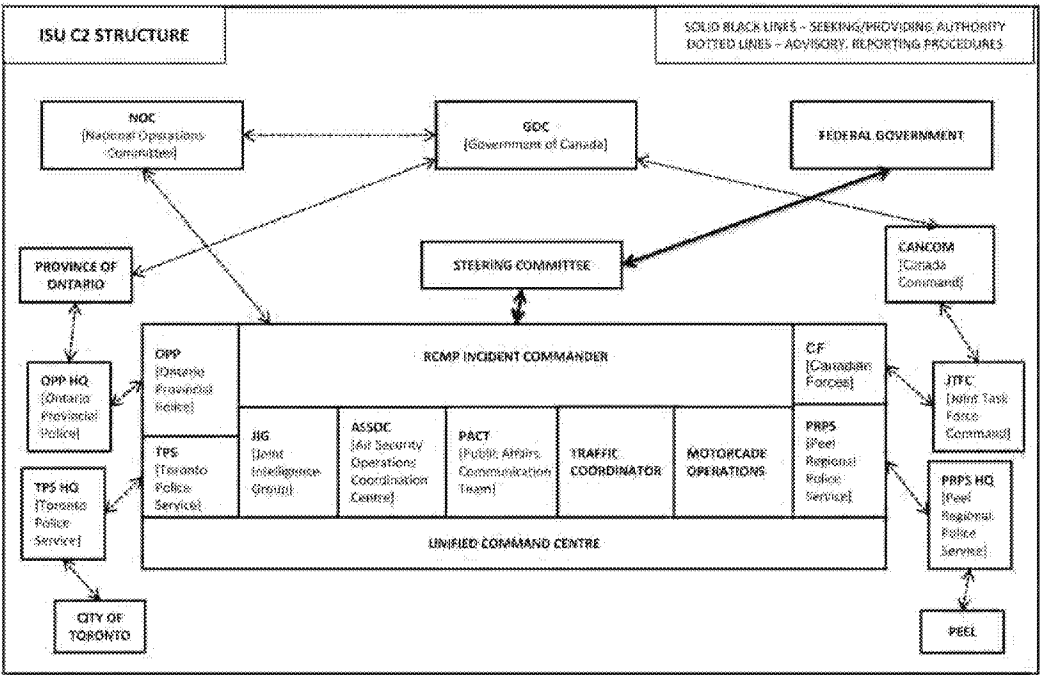
¹² Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 24.

¹³ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 29.

¹⁴ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 31.

communication from the UCC to the MICC. This feature is in accord with the text of the C2 document:¹⁵

In the G20 Matrix the communication link between the MICC, Jurisdictional Commander and RCMP, Site Commander will be through the Area Command, who will ensure that both areas are informed, where applicable.¹⁶



iii. Decision-making matrix

I turn now to the C2 document's content which governed the making of decisions to give effect to the various police responsibilities during the course of the Summit.

The C2 document began with the general premise that the police force of jurisdiction would address issues within the G20 Summit security zones for which they were responsible.¹⁷ However, with respect to specific tactical decisions and actions that may be taken during the event, the C2 document included "Annex B – Levels of Authority – Decision Making." In a chart, Annex B prescribed which level of command (Site Commander, MICC, TACC, UCC, and Steering Committee) had the power to authorize specific police actions, including deployment of Public Order units, arrest and detention, deployment of CS (Tear) Gas, and deployment of OC

¹⁵ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 31.

¹⁶ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 25.

¹⁷ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 25.

(Pepper) Spray.¹⁸ Only one level of command had the power to authorize a specific action. Once an authorization had been given, all other levels of command were to be informed that the authorization had been given.¹⁹

B. DEVELOPING THE COMMAND AND CONTROL STRUCTURE

As I mentioned in *Chapter 3 - Planning and Policing Framework for the G20 Summit*, no “arrangement” under the *FMIOA* was entered into between the ISU partners. Therefore, the C2 document was the only agreement that governed the distribution of command and control authority as between the partners. Ultimately, the C2 document amounts to no more than an agreement, albeit an important one. I shall now briefly canvass the process that was undertaken to develop the C2 document.

A small working group comprised of representatives of the ISU partners began meeting in January 2010 for the purpose of creating a document setting out the command and control structure that would be in place for the G20 Summit.²⁰ We were advised that drafting the C2 document came about through a process of “discussion, input and consensus building by the partners.”²¹ There were occasions when one partner would raise an issue for discussion that related to a particular aspect of the command and control structure. Ultimately, the partners resolved all issues, which “resulted in an agreement acceptable to all.”²² The final version of the C2 document was approved by the Steering Committee on June 17, 2010.²³

At no point during the development of the C2 document or after its approval was the Toronto Police Services Board (“Board”) provided any information concerning the command and control structure for the G20 Summit.

C. TWO GAPS IN THE COMMAND AND CONTROL STRUCTURE

The C2 document delineated which entity had the authority to make decisions on specific operational matters during the G20 Summit. Annex B leaves no doubt as to which command centre could give the order to deploy certain resources and to authorize certain tactics.

I should state, however, that the C2 document fell short in two important respects. I shall describe each of them below and explain how these gaps created complications in the G20 Summit command structure and affected the delivery of policing by the Toronto Police Service.

¹⁸ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex B – Levels of Authority – Decision Making, Summits – GTA Specific (June 2010).

¹⁹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), Annex B – Levels of Authority – Decision Making, Summits – GTA Specific June, 2010.

²⁰ Toronto Police Service Answers to Undertakings, No. 20(ii) (21 February 2011).

²¹ Toronto Police Service Answers to Undertakings, No. 20(iii) (21 February 2011)..

²² Toronto Police Service Answers to Undertakings, No. 20(iii) (21 February 2011)..

²³ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010).

i. No direct command link between the MICC and RCMP and OPP resources

While resources deployed to the Outer Zone were to be under the command of the Toronto Police Services, the C2 document did not contemplate a direct command link between the MICC and RCMP or OPP resources deployed to the Outer Zone.²⁴ Instead, it provided that RCMP and OPP resources were under the direct command of the TACC.²⁵ This gap existed despite the ISU Public Order Unit Operational Plan's express contemplation of RCMP Tactical Troops, deployed to the G8 Summit, being redeployed to the G20 Summit to provide "assistance to another police jurisdiction."²⁶

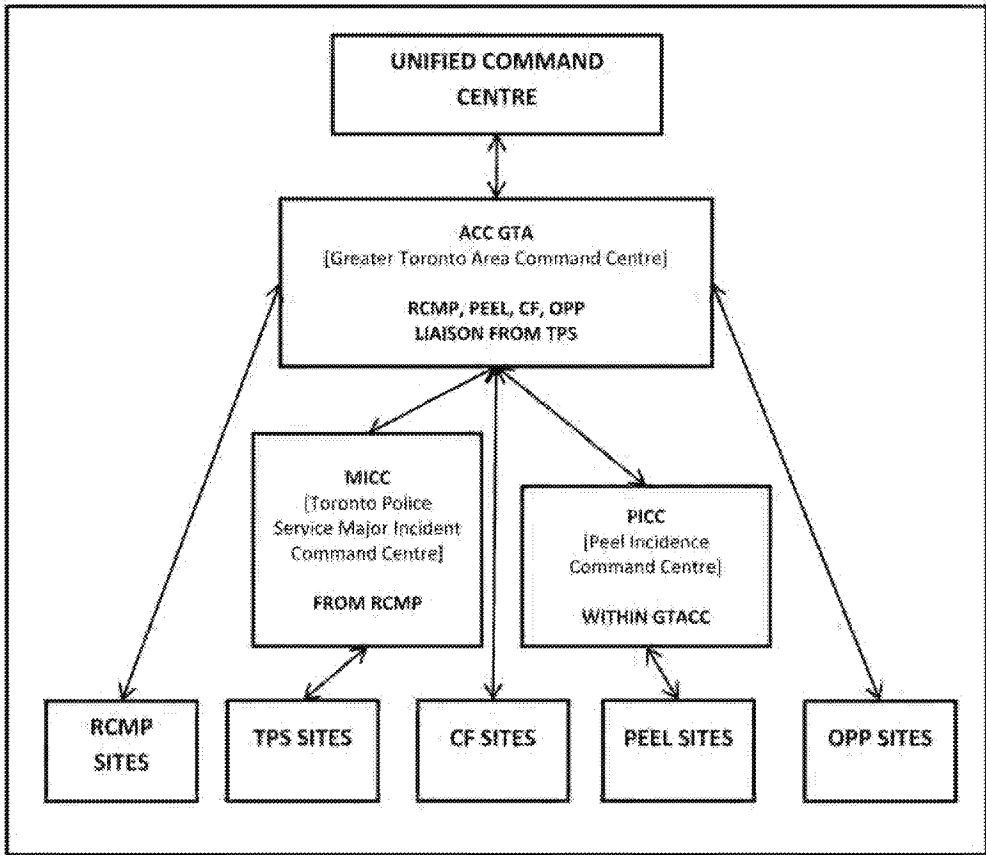
My review of the materials furnished to us confirms that two consequences resulted from this gap. First, after being deployed to the Outer Zone on Sunday, June 27, at least one RCMP Unit Commander (who was in command of 76 RCMP officers) initially took orders directly from the TACC rather than from the MICC.²⁷ In other words, even though RCMP officers were deployed in the Outer Zone, they were not initially taking orders and directions from the Toronto Police Service. This also meant that for a period of time on June 27, there were, in effect, two chains of command operating simultaneously in the Outer Zone: Toronto Police Service resources were receiving orders from the MICC, while RCMP resources were receiving orders from the TACC. This created confusion for the RCMP Unit Commander and created the potential for conflicting orders being given to officers in the same security zone. Eventually, a Toronto Police Service communications liaison officer was assigned to the RCMP unit, who then acted as a direct link between the RCMP Unit Commander and the MICC.

²⁴ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 16 and 23. As I will explain in *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, the Board and the RCMP did not enter into a Memorandum of Understanding governing the days of the G20 Summit itself. However, the parties entered into a Memorandum of Understanding, dated 14 June 2010, which applied to the period 20 to 23 June 2010. This Memorandum of Understanding facilitated the deployment of RCMP officers in Toronto to familiarize themselves with the city in advance of the G20 Summit. Notably, this Memorandum of Understanding did not include a provision that stated that the RCMP would be under the operational command of the Toronto Police Service during this deployment.

²⁵ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 23.

²⁶ Integrated Security Unit, *2010 G20 Summit Operational Plan*, Chapter 12: Public Order Unit Operational Plan (4 June 2010) at 17.

²⁷ RCMP "E" Division Lower Mainland District Integrated Tactical Group Scribe Notes (27 June 2010) at 11:20, 14:46 and 15:35.



The RCMP Unit Commander's notes, recorded in real-time, confirm that immediately on being deployed to the Outer Zone, orders were initially being received from the TACC and not the MICC. These orders included a specific tactical movement to be taken:

15:35 [RCMP Superintendent in the TACC] phoned [RCMP Unit Commander in the Outer Zone]. ORDER GIVEN: To stage 2 lines between OPP soft hat and the bus at the intersection of Bay and King Street, supporting the soft hat members.²⁸

It was not until 3:50 p.m. on June 27 that the RCMP Unit Commander himself determined that he would begin taking orders from the MICC:

15:50 [RCMP Unit Commander in the Outer Zone] advised [RCMP Superintendent in the TACC] that he will take all orders from here on [in] from MICC Command, through [a Toronto Police Service Constable] as he has a portable radio on the correct channel.

²⁸ RCMP "E" Division Lower Mainland District Integrated Tactical Group Scribe Notes (27 June 2010) at 15:35.

15:55 As per [RCMP Unit Commander's] direction, [Toronto Police Service Constable] contacts and advises MICC that [RCMP "E" Division Lower Mainland District] Tactical Troop will take all orders from MICC.

16:10 [...] DECISION: [RCMP "E" Division Lower Mainland District] Tactical will take orders from MICC, not [from] site commander.²⁹

The second consequence of this gap in the C2 document was general and fairly widespread confusion experienced by RCMP and OPP officers deployed in the Outer Zone concerning the command and control structure. In an RCMP debriefing concerning public order issues during the G20 Summit, an RCMP Unit Commander noted that "[i]t was difficult to determine who was in charge."³⁰ There is evidence that the OPP also experienced similar confusion. Notes from a debriefing of its Public Order Unit ("POU") commanders included the following comments:

Not provided a clear understanding [c]ommand and control structure.³¹

It appeared that the span of control was too large for the POU command sitting in the MICC and on ground POU Commanders were not fully briefed on the command and direction they [were] receiving.³²

On ground POU commander[s] [were] a little confused as to what teams [were] responsible for as the MICC would pull and move teams without advising the POU commander.³³

Participants in this debriefing recommended that for future events, there should be a "[c]lear understanding of Command and Control structure."³⁴

I appreciate that the implementation of a command structure may give rise to challenges. However, the deployment of RCMP resources to a security zone under the Toronto Police Service's responsibility was explicitly contemplated during the planning process.³⁵ Therefore, it was imperative that a link between the MICC and all resources deployed to the Outer Zone be included in the C2 document.

²⁹ RCMP "E" Division Lower Mainland District Integrated Tactical Group Scribe Notes (27 June 2010) at 15:50, 15:55 and 16:10.

³⁰ RCMP, "Public Order Unit Teleconference" (6 April 2011) at 15:00.

³¹ OPP, "OPP SFR G-20 After Action Report" (undated) at 1.

³² OPP, "OPP SFR G-20 After Action Report" (undated) at 1.

³³ OPP, "OPP SFR G-20 After Action Report" (undated) at 2.

³⁴ OPP, "OPP SFR G-20 After Action Report" (undated) at 2.

³⁵ Integrated Security Unit, *2010 G20 Summit Operational Plan*, Chapter 12: Public Order Unit Operational Plan (4 June 2010) at 17.

ii. No transfer of command process

As I have outlined in the previous chapter, events on Saturday, June 26 led the Toronto Police Service to request that the RCMP take over command of the Interdiction Zone. Again, this was for the purpose of freeing up Toronto Police Service resources to be moved into the Outer Zone.

A decision to transfer command of an entire security zone to another agency is significant. In this case, the decision necessitated the redistribution of hundreds of police officers at the height of the violence and property damage experienced during that weekend. However, despite all that would necessarily be involved, the C2 document did not contain any process on how one ISU partner would transfer command to another.

The Toronto Police Service requested that the RCMP assume command of the Interdiction Zone at 5:30 p.m. on June 26.³⁶ At the time, the Toronto Police Service faced many policing challenges in the Outer Zone, including significant property damage and violence. Time was of the essence. However, the RCMP assumed command of the Interdiction Zone a full 12 hours later, at 5:39 a.m. on Sunday, June 27.³⁷ Over the course of these 12 hours, there is evidence of the Toronto Police Service's concern that this delay restricted its ability to move much-needed resources into a different zone.

Less than two hours after the initial command transfer request was made, the Toronto Police Service sought an "ETA on [the] RCMP taking over the [Interdiction Zone]."³⁸ The response received was that the "RCMP will [advise]."³⁹ Just over one hour later, the MICC Incident Commander "advised [the RCMP] that he needs the RCMP to take over the [Interdiction Zone] now."⁴⁰ Still, at 9:45 p.m., the RCMP advised that there was "no update on RCMP deployment."⁴¹ This back and forth continued for several more hours.

At 1:55 a.m. on Sunday, June 27, the Toronto Police Service received confirmation that the Interdiction Zone was "now controlled by the RCMP."⁴² Only minutes later, however, the Toronto Police Service was advised that the "RCMP [is] unsure if [they] have control" and that the order for the RCMP to take command of the Interdiction Zone "has to come from the TACC."⁴³ The RCMP began discussing the "process of taking control" of the Interdiction Zone with the TACC via telephone.⁴⁴ At 2:14 a.m. – almost nine hours after the request by the Toronto Police Service was made – the RCMP advised that it was "NOT accepting command of [the

³⁶ RCMP, EMS – G8-G20 Summits (Situational Board), Incident ID 768 (26 June 2010 at 19:04:53) at 1.

³⁷ Toronto Police Service Scribe Notes (26 June 2010) at 17:39; Toronto Police Service Scribe Notes (27 June 2010) at 05:31.

³⁸ Toronto Police Service Scribe Notes (26 June 2010) at 18:11.

³⁹ Toronto Police Service Scribe Notes (26 June 2010) at 18:11.

⁴⁰ RCMP, EMS – G8-G20 Summits (Situational Board), Incident ID 768 (26 June 2010 at 19:22) at 2 [emphasis added].

⁴¹ Toronto Police Service Scribe Notes (26 June 2010) at 21:45.

⁴² Toronto Police Service Scribe Notes (27 June 2010) at 01:55.

⁴³ Toronto Police Service Scribe Notes (27 June 2010) at 02:06.

⁴⁴ Toronto Police Service Scribe Notes (27 June 2010) at 02:06.

Interdiction Zone]”⁴⁵ and that the Toronto Police Service was “in control [of the Interdiction Zone] [until] stated otherwise.”⁴⁶

The RCMP finally took command of the Interdiction Zone at 5:31 a.m. – as I have said, 12 hours after the Toronto Police Services initial request.⁴⁷ In written answers to undertakings given during the Chief’s interview, the Toronto Police Services Incident Commander advised the Review that he understood the cause of the delay to be that the RCMP “wanted to ensure that they had sufficient numbers of officers to secure the [Interdiction Zone] before taking that responsibility. The movement of that amount of human resources was a challenge.”⁴⁸ However, at 1:55 a.m. “all [Toronto Police Service] units were out of the [Interdiction Zone]” and, as I have mentioned, the RCMP initially advised that they were in command of the Interdiction Zone at that time.⁴⁹ For the RCMP to have been in a position to take command of the Interdiction Zone, sufficient RCMP or OPP resources must have already been deployed.⁵⁰ Ultimately, the RCMP did not actually assume command of the Interdiction Zone for another several hours. In my view, the record as a whole, including the specific parts I have reviewed in the paragraph above, make clear that a significant factor that delayed the RCMP assuming command from the Toronto Police Service was the absence of a specific process for the transfer of command.⁵¹

I conclude that this gap in the C2 document impeded the Toronto Police Service’s ability to adequately and effectively police the Outer Zone. Even after the decision was made to transfer command to the RCMP, the Toronto Police Service was left “in limbo,” unclear as to when this transfer would actually take place and, in the meantime, was required to continue commanding and policing the Interdiction Zone. Had the C2 document included a specific process by which transfer of command would occur, twelve vital hours may not have passed before the Toronto Police Service was fully able to redirect its attention to the policing challenges which had unfolded in the Outer Zone.

Policing of the G20 Summit was multi-jurisdictional. At various points in time, it was possible that changes in command may have been necessary. For example, given its mandate to protect IPPs, if the RCMP formed the view that the security of IPPs was at risk because of events in the Outer Zone, it could have assumed command of the Outer Zone:

[I]f at any time it was interpreted by the UCC that the [Toronto Police Service] had lost control of their area of authority to the extent that the integrity of the Summit or the safety of the delegates was at risk, the UCC and their Unified Command Structure which

⁴⁵ Toronto Police Service Scribe Notes (27 June 2010) at 02:14.

⁴⁶ RCMP Scribe Notes (27 June 2010) at 02:37.

⁴⁷ Toronto Police Service Scribe Notes (27 June 2010) at 05:31.

⁴⁸ Toronto Police Service Answers to Undertakings, No. 58 (21 February 2011).

⁴⁹ Toronto Police Service Scribe Notes (27 June 2010) at 01:55.

⁵⁰ RCMP Scribe Notes (27 June 2010) at 02:30.

⁵¹ Toronto Police Service Scribe Notes (27 June 2010) at 02:06.

included [Toronto Police Service] commanders could take command and control of [Toronto Police Service] resources.⁵²

As the C2 document itself stated, “[i]f a critical incident or terrorist activity occurs during the G8 or G20 Summits that would constitute a threat to the security of Canada or to an IPP [Internationally Protected Person], the UCC will ensure that immediate actions are taken to safeguard life and property.”⁵³ The real possibility for transfer of command to respond to security events during the G20 Summit should have caused the ISU partners to detail a process to accomplish this effectively.

D. BOARD ROLE IN SETTING COMMAND AND CONTROL STRUCTURE

As I shall explain more fully in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*, the Board received no substantive information with respect to the command and control structure that would operate during the G20 Summit.

I shall make just two brief points in concluding this chapter. First, given the Board’s responsibility for the provision of adequate and effective policing in the City of Toronto under section 31(1) of the *Police Services Act*, it should have sought sufficiently detailed information to be confident that mechanisms were in place to govern how the Toronto Police Service would give orders to the thousands of police officers deployed in the Interdiction Zone and the Outer Zone. Second, given the multi-jurisdictional nature of policing for the G20 Summit and the potential for police officers in areas of the City of Toronto to become subject to the command of the RCMP, it was incumbent on the Board to understand what command and control structure was in place. Without involving itself in these fundamental issues, the Board could not discharge its responsibility to ensure adequate and effective policing in Toronto during the G20 Summit.

Recommendation No. 14: Board to obtain information concerning the command and control structure for multi-jurisdictional policing events

The command and control structure for the policing of a particular event has a direct impact on the manner in which police services will be delivered. When the Toronto Police Service is involved in a multi-jurisdictional policing event in Toronto, the Board shall require information from the chief of police concerning the command and control structure for the event. The Board shall also ensure that the command and control structure will enable the Toronto Police Service to adequately and effectively provide police services for the event and for the city of Toronto generally.

⁵² Toronto Police Service Answers to Undertakings, No. 21 (21 February 2011).

⁵³ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010) at 15.

CHAPTER SIX: TORONTO POLICE SERVICES BOARD'S KNOWLEDGE OF G20 SUMMIT MATTERS

INTRODUCTION

I have been asked to examine the information received by the Toronto Police Services Board ("Board") concerning the planning and policing of the G20 Summit and to determine whether the information the Board acquired was sufficient to facilitate the discharge of its oversight responsibilities. There are various questions in the Terms of Reference regarding the information sharing that occurred between the Board and the Toronto Police Service in the lead up to the G20 Summit. All of these questions relate in some way to the issue of what the Board knew or was able to know concerning the plans for the G20 Summit and how the information available to the Board impacted on its ability to carry out its duties. I will deal with the following related Terms of Reference together in this chapter:

2. (a) A review of the information given to the Board by the Toronto Police Service and other agencies concerning the framework and plan for policing the G20 and the issues that were anticipated to arise in connection with the policing of the G20 and whether it was adequate to allow the Board to discharge its responsibilities pursuant to the Act.

(b) A review of any issues or problems faced by Board members with respect to information that they received, or felt that they ought to have received, having regard to the multi-faceted nature of the responsibilities that Board members had within the City of Toronto governance structure and/or with respect to the community.

(c) A review of the briefings with respect to G20 policing issues that were provided to the Board by the Toronto Police Service and other City of Toronto officials and whether the manner in which the Board received the information was adequate to allow the Board to appropriately consider it.

3. (i) A review of the information that the Board was given, if any, and the role, if any, the Board played in considering and approving the framework and strategy for the policing of the G20 including the command structure.

3. (iv) A review of the information that the Board was given, if any, and the role, if any, the Board played in considering and approving directions or instruction that would be given to or by police officers with the Toronto Police Service who were going to be performing policing duties at the G20 with respect to:

their obligations under the *Charter of Rights and Freedoms* and under the *Criminal Code*;

demanding identification from people;

their powers to search individuals without a search warrant;

their powers to arrest individuals without an arrest warrant; and

the use of force on people participating in a demonstration.

3. (vi) A review of the information that the Board was given, if any, and the role, if any, the Board played in entering into agreements relating to police officers who were not with the Toronto Police Service, but who were assisting with the policing of the G20 with respect to whether, or how they would be held accountable for their conduct while assisting with the policing of the G20.

3. (vii) A review of the information that the Board was given, if any, and the role, if any, the Board played in negotiating contracts, setting or approving budgets, making decisions with respect to human resource issues and procurement issues relating to the policing of the G20, and whether the role that the Board played appropriate.

4. (a) Was the information given to the Board by the Toronto Police Service and relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing services provided to the City of Toronto during the G20.

(b) Did the Board ask appropriate questions of Chief Blair and of relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing service provided to the City of Toronto during the G20.

Before turning to the facts which help answer the questions posed above, I wish to make a few preliminary comments about the role information plays in the civilian oversight of policing generally. Effective civilian oversight of the police requires the ongoing sharing of relevant information between the police service and the police services board. Everyone, including individual police officers, the chief of police, board staff and board members, rely on the dissemination of accurate and timely information to carry out their defined roles and responsibilities, and effectively to conceive, develop and implement strategies, policies or procedures for the policing of various events.

A police services board has a pivotal role to play in developing collaborative working relationships with the police service and in ensuring there is open communication and engagement between the board and the chief of police. It bears the primary responsibility for ensuring that it has the correct amount of relevant information, delivered in an efficient and understandable manner, so that it can effectively carry out its mandate and achieve its legislative objectives.¹ Therefore, it is imperative that a board keep abreast of community issues, public safety concerns and policing strategies and tactics so that it may properly assess the information it requires to make a decision on matters that fall within the scope of its responsibilities. Remaining ‘plugged in’ to these issues will permit a board to carefully consider and determine the type of information it needs, identify any existing barriers to receiving this information, and develop policies to ensure that essential information is shared in an appropriate manner.

¹ Ontario Association of Police Services Board, Handbook, Chapter 6.

For the purposes of this chapter, I have reviewed the Board meeting minutes, relevant Toronto Police Service and Board documents, the Toronto Police Service After-Action Review report,² and the interview answers provided by Chief Blair, each Board member and Board Staff, as well as counsel to the Board. The chapter is divided into three separate parts. In the Part I, I will provide a general overview of the information sharing practices used, both formal and informal, between the Board and the Toronto Police Service. This section will include a discussion of the manner in which information is communicated to the Board, the types of information the Board typically receives and/or requests from the Toronto Police Service, and other sources of information that the Board can rely on.

The focus of Part I is to provide background and context. In Part II, I will evaluate whether the information exchange between the Toronto Police Service and the Board on various issues related to the G20 Summit constituted a significant departure from the Board's general practice. I will also assess whether the information provided or sought by the Board was sufficient to allow it to properly discharge its statutory responsibilities. My discussion will include: (i) a general overview of the briefings provided to the Board on G20 policing issues; (ii) an issue by issue assessment of the information provided to the Board and the questions asked or information sought by the Board in respect of these issues; (iii) whether the manner in which the information was provided and the substance of that information was sufficient to permit the Board to fulfill its mandate to provide adequate and effective police services; and (iv) what role, if any, the Board played in addressing specific G20-related matters and whether that role was appropriate.

Finally, in Part III, I will address some of the issues or problems faced by Board members with respect to the information that they received or felt that they ought to have received having regard to their multiple roles and responsibilities.

PART I GENERAL INFORMATION SHARING PRACTICES

The interviews we conducted with all Board members, Board Staff, and Chief Blair sought answers concerning the usual manner in which information comes into the hands of the Board and how the Board goes about seeking the material it needs to do its job. What follows is a discussion about the different sources from which the Board can obtain information and the manner in which that information is provided to the Board as it carries out its day-to-day business.

A. FORMAL COMMUNICATIONS BETWEEN THE CHIEF AND THE BOARD

i. Board meetings

The chief of police often serves as the main source of information and assistance to a police services board, providing members of the police services board with the information it needs to carry out its role of prescribing policies for the effective management of the police force and

² Toronto Police Service, *G20 Summit After-Action Review* (June 2011).

ensuring the provision of adequate and effective police services.³ Official meetings of the Board serve as the main forum for this information to be transmitted to the Board.

A police services board is required to meet a minimum of four (4) times per year and each board member is required to attend and actively participate in all board meetings.⁴ These meetings are open to the public and the media except in limited circumstances where the board is of the opinion that matters involving public security, intimate financial details, or personal matters may be disclosed such that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that meetings be open to the public.⁵ Where a meeting is closed to the public, members of the board are required to keep confidential any information disclosed or discussed at the meeting.⁶

The Board exceeds the minimum statutory requirements for convening board meetings. On average, members of the Board meet once per month to discuss policy and management issues affecting the Toronto Police Service. The Board can and has held additional or special meetings to deal with issues that demand the Board's immediate attention. Chief Blair (or his designate), counsel to Chief Blair, Board Staff, Board members, and counsel to the Board generally attend each of these regular or special meetings. I have been advised that for this Board, every regularly constituted meeting has both a closed and public session. The closed portion of the Board meeting is typically used to discuss matters protected from disclosure under the *Police Services Act*, such as sensitive and personal information relating to employment, dismissal, promotion, officer safety, human rights, and professional standards.⁷

ii. Setting the agenda for Board meetings

Setting the agenda for a board meeting is the single most important task in planning an effective and productive meeting. The agenda sets the framework and tone of the discussion and allows participants to know what to expect and what needs to be accomplished in the designated time frame. The agenda is principally set by the Chair and Board Staff.⁸ Generally, items make their way to the agenda in one of three ways: (i) a Board response to reports submitted by the Chief is required (the delivery of these reports are prescribed by Board policy or statute or are specifically requested by Board members on issues that arise in the course of business); (ii) a Board response to letters and/or reports submitted by the Chair is required; and/or (iii) Board members identify specific matters for discussion (usually through submitting a formal report) or submit requests for a follow-up report from the Chief.

³ Ontario Association of Police Services Board, Handbook, Chapter 6.

⁴ *Police Services Act*, R.S.O. 1990, c. P.15, s. 35; *Members of Police Services Boards – Code of Conduct*, O. Reg. 421/97, s. 1.

⁵ *Police Services Act*, R.S.O. 1990, c. P.15, s. 35.

⁶ *Members of Police Services Boards – Code of Conduct*, O. Reg. 421/97, s. 4.

⁷ *Police Services Act*, R.S.O. 1990, c. P.15, ss. 35(3) and (4).

⁸ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 9; Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 11; Review's Interview with Judi Cohen (12 September 2011, Toronto) at 12.

Most of the items on meeting agendas are standing items that appear on the agenda on a monthly, quarterly, semi-annual, or annual basis. These items typically relate to mandatory reports which are submitted to the Board in compliance with statute or policy, such as budget variance reports, human rights complaint reports and grievance reports.⁹

There are, however, several other less formal ways in which a matter may make its way into a Board meeting for discussion or debate. For example, Board members are free to request that a matter be placed on the agenda for discussion. Nevertheless, Chair Mukherjee stated in his interview that there is no proactive canvassing of Board members for their suggestions on setting the agenda.¹⁰ Given the importance of ensuring that the Board has the information necessary to make decisions on matters that fall within its purview, coupled with the fact that Board meetings are the primary source of information for members, there should be a regularized process to solicit Board members' input in setting the agenda for Board meetings. Further, I was informed that even when a Board member makes a request, usually through a written report, to have an issue added to the agenda or to have the Chief put forward a report to the Board on a particular matter, that request is typically screened – and sometimes questioned – by the Chair.¹¹ For instance, Board Member Judi Cohen noted during her interview that she encountered difficulties in trying to add an issue to the Board agenda during the lead up to the G20 Summit:

Yes, when I was questioning the LRAD [long-range acoustic device] issue. When I was questioning the LRAD, I said that I wanted this raised and I recall that there was some difficulties in that and then it was [Board Staff] that worked with me on the report so [Board Staff] actually changed the wording and edited the wording to go in, but they don't really, they don't encourage Board members to put reports forward.¹²

In these cases, Board members can, and have, “walked” new items onto the agenda by raising issues at either the public or confidential portion of the Board meeting. Certain Board members highlighted that there is no established mechanism or procedure for addressing and responding to walk-on items in a consistent manner.¹³

There are also circumstances where the Chief may, on occasion, provide an unofficial and impromptu oral briefing at a Board meeting on a particular matter that is not itemized on the agenda or included in a formal report. Some Board members expressed concern in their interviews about the informal nature of these oral briefings, which are often provided in the confidential portion of the Board meeting and, in particular, the fact that these briefings are typically never recorded, either through a report or a transcript.

⁹ As another example, s. 31 of the *Adequacy and Effectiveness of Police Services* regulation, O. Reg. 3/99 requires every Chief of Police to prepare an annual report for the police services board relating to the activities of the police force during the previous fiscal year, including information on its performance, objectives, indicators and results, public complaints and the actual cost of police services.

¹⁰ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 19-21.

¹¹ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 11.

¹² Review's Interview with Judi Cohen (12 September 2011, Toronto) at 12.

¹³ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 11.

Recommendation No. 15: The Board should record confidential Board meetings

Properly recording discussion and information provided during Board meetings is critical. It ensures that an accurate record of the questions asked and decisions or recommendations made is preserved. The Board should institute a practice of audio recording all confidential Board meetings.

iii. Pre-meeting agenda briefings

Once the meeting agenda is set, the Chair holds two separate agenda briefings in advance of the meeting: one with Board Staff and the other with the Chief and his staff. The purpose of these meetings is to ensure Board members have all the information they need to make a decision or recommendation at the meeting and to give the Chief an opportunity to identify potential questions that may be asked by Board members.

The first agenda briefing meeting is typically held a few days before the scheduled Board meeting. The Chair will meet with Board Staff to review, discuss, and identify any issues or concerns with the agenda items. During this meeting, potential recommendations in response to certain items on the agenda may be formulated, in the form of motions, for tabling at the Board meeting. During his interview, Chair Mukherjee stated that it was within his discretion to pull an item from the agenda at these briefings if, for instance, he decides that the Chief's report on an agenda item is unsatisfactory or is missing relevant information.¹⁴ In those cases, the Chief will be asked to provide a more detailed report for a future meeting.

After the meeting with Board Staff, the Chair meets with the Chief and his staff to review the agenda. The purpose of this meeting is to identify for the Chief any questions or concerns that may be raised by Board members in response to the items on the agenda in order to give the Chief an opportunity to prepare a meaningful and intelligent response for delivery at the Board meeting. In Chief Blair's interview, he stated that these pre-meeting agenda briefings are extremely useful for him as they ensure that, where more information may be helpful to the Board to further explain or clarify a matter, there is an opportunity to identify this and gather the information in time for the Board meeting.¹⁵

Currently, Board members are not generally invited to participate in either of these pre-meeting agenda briefings and, as such, do not really have an opportunity to provide their input or submit questions.¹⁶ We were advised that Board members were not invited to attend these agenda briefings out of concern that, if a quorum of Board members were present, it could constitute an official Board meeting that was improperly closed to the public. In essence, then, these pre-

¹⁴ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 22.

¹⁵ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 8-9.

¹⁶ On occasion, the Board's vice-chair has either attended the agenda briefing in person or received an update from the Chair on the outcome of these meetings. However, there does not seem to be any regular participation of the vice-chair.

meeting agenda briefings are administrative in nature, providing an opportunity to clarify agenda items, determine whether more information needs to be collected, and generally give individuals some advance notice of what will be discussed at the upcoming Board meeting.

Some Board members shared their perspectives on these pre-meeting agenda briefings. Board Member Hamlin Grange stated in his interview that the Board previously had a practice whereby members could, if they wished, attend the pre-meeting agenda briefing with the Chair and Board Staff to review the agenda and ask specific questions or seek information that they required prior to the meeting. According to Mr. Grange, this practice did not last very long but no particular explanation was provided for why it came to an end other than the fact that Board members were not always able to attend the meeting and some felt that it was not useful.¹⁷ In Board Member Hon. Hugh Locke's interview, he suggested that before this shift in practice he used to meet with the Chair, the Executive Director, and the Senior Policy Advisor to discuss matters relating to the upcoming meeting. Mr. Locke stated that he attended these meetings to obtain information that he felt may not otherwise be disclosed or discussed at the Board meeting and that while he was not precluded from attending, his presence was not particularly welcomed.¹⁸

Recommendation No. 16:

The Board should develop a mechanism to ensure all Board members are canvassed in advance of pre-meeting agenda briefings

The pre-meeting agenda briefings present a useful opportunity for the Chair and Board Staff to identify areas and issues that may be of concern or interest to the Board and that should be placed on the agenda, and to work with the Chief and his staff to obtain information the Board requires. The Board should develop a mechanism that requires canvassing all members in advance of these briefings to identify questions or requests for information that can be conveyed by the Chair during the briefings.

iv. Adequacy of information transmitted at Board meetings

When asked in their interviews, Board members generally did not have major concerns about the *manner* in which information was transmitted or the *amount* of information provided by the Chief or the Toronto Police Service to the Board. In fact, the consensus amongst Board members was that, generally, Chief Blair was quite forthcoming with information and provided much more information than previous Chiefs.¹⁹ In fact, Board Member and City Councillor Pam McConnell suggested in her interview that the transmission of information to the Board is dependent almost

¹⁷ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 50-51.

¹⁸ Review's Interview with Hon. Hugh Locke (16 September 2011, Toronto) at 17-18.

¹⁹ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 54; Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 57-58; Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 32.

entirely on who occupies the Chief's role because, in the view of most Board members, the Chief alone decides what and how much information the Board will receive.²⁰

That being said, Chair Mukherjee stated in his interview that, in certain circumstances, the quality and amount of information the Board receives from Chief Blair or the Toronto Police Service is "uneven."²¹ On certain matters, the Board would receive an abundant amount of information in a small block of time, making it difficult to absorb all of the important details. Other times, the Board felt that it was not provided with the right kind or amount of information to aid it in making a decision or carrying out its roles and responsibilities.²² To illustrate this point, Councillor McConnell used the example of the Toronto Police Service annual budget process. The Board is responsible for developing a budget for the operation of the Toronto Police Service that will ensure the provision of adequate police services in the city of Toronto. As part of that process, the Board requires information from the Toronto Police Service concerning its recommendations as to what human resources, equipment, and other expenditures will be required for the upcoming year. For a long time, the Toronto Police Service would provide the Board with only a one-page summary of the budget recommendation, devoid of any detail or breakdown, on the basis that this information was not within the Board's purview.²³ It was only after the Board made several inquiries and demands for particulars that it was eventually provided with additional information and data about the budget projections.²⁴ Obviously, this detail is essential for the Board to have in discharging its important budget function.

Where the Board is of the view that the Chief did not provide all the information it felt was necessary, it can request additional material from the Chief or the Toronto Police Service by asking questions or requesting a follow-up report. Chief Blair advised that, in his experience, the Board is "quite inquisitive" and often makes requests for additional information.²⁵ He also confirmed that the Toronto Police Service always undertakes its best efforts to provide a response to the Board. The Chief did note, however, that it was not always possible from a practical standpoint to obtain and deliver the requested information in a timely manner, although urgent requests would typically be expedited.²⁶ In addition, Chief Blair stated that he has emphasized to his staff the importance of keeping the channels of communication with the Board open in order to maintain a collaborative and cooperative relationship between the Toronto Police Service and the Board.²⁷

With respect to asking questions, the consensus of Board members was that while the Chief typically provides the Board with additional information in response to a question, Board

²⁰ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 60-61.

²¹ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 79; See also Review's Interview with Judi Cohen (12 September 2011, Toronto) at 55-56.

²² Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 79-82.

²³ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 62.

²⁴ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 26 and 61-63.

²⁵ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 45.

²⁶ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 42-46.

²⁷ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 10.

members often find it difficult to determine what information they need to ask for and whether the information they receive is sufficient. Mr. Grange aptly characterized this problem in his interview as follows: “the questions you ask [are] only as good as the information you have in front of you and if you don’t have the information, you don’t know what questions to ask.”²⁸ Ms. Cohen expressed a similar sentiment, stating in her interview that “had the Board been informed, it might have been in a much better position to ask the right questions.”²⁹ Chair Mukherjee also shared the view of his fellow members, stating: “if you didn’t know enough to ask the questions, you wouldn’t get an answer.”³⁰

The common theme that emerges from the statements of different Board members is the reality of the Board’s dependence, to a certain extent, on the Chief and on Board Staff to identify issues about which additional information may be useful or questions that should be asked. This places the Board in an odd position. In order to do the job assigned solely to it by the *Police Services Act* – ensuring “adequate and effective policing” is provided in the city of Toronto – it requires the help of others. For example, where a major policing event is to take place, Board members, who do not necessarily have any previous experience with policing, may not appreciate the various details that must be hashed out and agreed to in advance of the event, such as the legal framework in which the Toronto Police Service will carry out its function, the command and control structure that will be adhered to, or whether additional legal powers are required for the Toronto Police Service to effectively police the event. In order for the Board to ensure the event is effectively policed, therefore, it requires the Chief to provide detailed information, on a *proactive* basis, so that the Board is able to identify areas where its intervention may be required. Without some advance information from those ‘in the know,’ the Board may never ask the relevant questions or obtain the necessary information. Of course, this burden cannot fall only to the Chief. The Board Staff, through regular communication with the Toronto Police Service, and counsel to the Board can play a useful role in bringing matters to the Board’s attention and identifying the type of information it may wish to request from the Chief.

B. INFORMAL COMMUNICATIONS BETWEEN THE CHIEF AND THE BOARD

In our interviews, we learned that a substantial amount of communication occurs between the Board and the Chief through certain informal methods, including impromptu meetings or discussions, *ad hoc* oral briefings at Board meetings, memoranda, telephone calls, or e-mails. Most of these informal communications take place between the Chair and the Chief, although Chief Blair advised that he made it known to Board members that he was always available to speak with them outside of formal Board meetings. In fact, some Board members recalled in their interview instances of Chief Blair having contacted each of them by phone to discuss important and/or urgent information concerning a specific matter. Board members were generally of the view that these *ad hoc* discussions were extremely useful as they provoked an open and honest

²⁸ Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 51.

²⁹ Review’s Interview with Judi Cohen (12 September 2011, Toronto) at 104.

³⁰ Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 80.

discussion between the Board and the Chief about various issues related to the police service which neither party necessarily felt comfortable discussing in a public or even at a confidential Board meeting.

Despite the usefulness of these informal communications, with the exception of the Chair, informal communications between members of the Board and the Chief occur on an infrequent basis. Moreover, the Board does not have any protocol in place to ensure that material information obtained by one Board member is shared with the entire Board at the next available opportunity. This can lead to differentiated decision-making, where one member has more information with which to assess a particular issue or make a decision than the others. To avoid this, it is essential that where members receive information outside of a formal Board setting, they share that information with the entire Board.

Separate from informal exchanges between the Chief and Board members, we also learned that there are more regular informal meetings or discussions that occur between the Chair and the Chief. While the actual frequency of these meetings is unclear, Chief Blair advised that he has:

...had many opportunities to sit and have discussions [with the Chair] about various things that are going on in the organization, things we are preparing for and planning for and responding to, issues of the day that arise that are of concern to the Board, provide what information I have available to me and those type of less formal discussions and I think [that is] a bit of a hallmark of our relationship...³¹

Most of these informal meetings were initiated at the request of Chair Mukherjee. According to Chair Mukherjee, these informal communications with the Chief were simply a means of ensuring that there was a good and constant flow of communication between the Board and the Toronto Police Service and that information necessary for the Board to assess a particular matter was transmitted to the Board in a timely manner. Chair Mukherjee also advised, however, that the topic and/or outcome of these informal discussions were not always communicated to the other members of the Board and there was no mechanism in place to ensure that information obtained by the Chair was shared with other Board members. Rather, it seems entirely within the Chair's discretion to decide whether or not to relay the information he obtained from the Chief to the Board. If the Chair decided to share the information, he would typically send an e-mail to each of the Board members if the issue required the Board's immediate attention and perhaps, as discussed below, formally raise it during a public or confidential Board meeting.³²

Chair Mukherjee stated in his interview that he often struggles with the decision of what to share with the Board because the information received from the Chief in these informal get-togethers may be highly confidential or sensitive. The Chair also could not recall, however, a specific situation where the Chief told him to keep the information shared confidential or hidden from the rest of the Board members but noted that if such a situation arose he would, if he felt it was appropriate, advise the Chief that the information should be shared with the rest of the Board and

³¹ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 42.

³² Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 78.

request that the Chief prepare a report in respect of same so that the issue could be placed on the next agenda.³³ The Chair's approach to sharing information with the Board is problematic for two reasons. First, there is no justification, in law or otherwise, for any one Board member to withhold information from other Board members, particularly given that each Board member takes the same oath of secrecy and each have the same legislative responsibility. Second, there are no guidelines upon which the Chair can properly assess the information received and act in making the decision of what to share or not share with the entire Board. Rather, his decision is based entirely on what he *believes* to be appropriate information to share with the Board. Suffice it to say, this is not a satisfactory way to determine what information the entire Board will receive on policing matters. We were advised, however, that a standing item on the agenda of each Board meeting specifically gives the Chair an opportunity to report on any of the issues or items that he has discussed with the Chief outside of formal meetings or communications.

The Board members had different opinions when asked whether there were any issues or concerns they had with the sharing of information received by the Chair from the Chief. Mr. Grange expressed concern about the Chair not sharing information with the rest of the Board, noting that it has become "an issue at times."³⁴ However, Mr. Locke was of the view that Chair Mukherjee was generally forthcoming with the information he obtained from Chief Blair and typically shared this information with the Board:

The Chair would have no hesitation at all in informing members of the Board [about] the subject matter of his discussions with the Chief. If he was asked, and very often if he wasn't asked, he would do it on his own volition. But in a verbal sense, not in a formal way, unless it was done of course at a Board meeting at which Ms. Williams would record the gist of what was said.³⁵

In closing on this issue, I wish to underscore how critical access to relevant information is to the civilian oversight function that the Board must discharge. Quite simply, no one member of the Board is entitled to information to the exclusion of other members – all members are on an equal playing field and should be equally informed about policing matters. Given the Chair's role as the formal figurehead of the Board, coupled with the fact that the Chair is the only member whose position on the Board is a full-time, salaried position, it makes sense that information meant for the Board as a whole will often be transmitted to the Chair. With this access, therefore, comes a concomitant responsibility to ensure that information provided to the Chair is supplied to the other Board members in a timely and complete fashion. This is the only way to ensure that the Board can make its best decisions.

³³ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 74-78.

³⁴ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 50.

³⁵ Review's Interview with Hon. Hugh Locke (16 September 2011, Toronto) at 44.

Recommendation No. 17:**The Board should create a policy requiring open communication and sharing of information between all Board members**

The Board should develop a policy that sets guidelines for the exchange of information between Board members. Under this policy all Board members would be required to share, at the earliest opportunity, information he/she receives through informal communications with the Chief on a particular matter or issue that is before the Board or that otherwise falls within the Board's statutory role and responsibilities.

C. INFORMAL COMMUNICATIONS AMONG BOARD MEMBERS

Board members sometimes communicate with one another about Board business outside of regularly scheduled Board meetings. We were advised that the general purpose of these discussions is to seek clarification or additional information on a particular matter. The frequency with which Board members engage in such informal discussions with one another is in part dependent on the particular members of the Board and the amount and type of information the Board is receiving from the Chief.

Similar to the justification for not inviting Board members to the pre-meeting agenda briefings, the general consensus among the Board members was that these informal, between-meeting communications were irregular and infrequent because they wanted to avoid having a quorum that could lead to the communications qualifying as an official Board meeting improperly held in private.

D. AN ALTERNATIVE SOURCE OF INFORMATION: THE ROLE OF BOARD STAFF

Board Staff play an important role in supporting the Board in its day-to-day responsibilities. Each member of Board Staff has his or her own distinct duties. In addition to various administrative functions, Board Staff are responsible for conducting research on policy issues, providing information to Board members on procedural matters, following-up on Board decisions and recommendations, providing advice to Board members on their statutory responsibilities, and facilitating the collaborative relationship between the Toronto Police Service and the Board. In these ways, Board Staff have become an important information source on which Board members have come to depend. For instance, Mr. Grange stated in his interview that he relied heavily on the advice and recommendations of Board Staff, including specific guidance on what questions the Board could ask of the Chief to obtain relevant information.³⁶

³⁶ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 21.

E. INFORMATION SHARING PRACTICES REGARDING OPERATIONAL MATTERS

Most of the Board members indicated in their interviews that Chief Blair was fairly open with the operational information he provided.³⁷ However, the members also noted that it is generally left within the Chief's discretion to decide how much or how little information is provided on these types of issues.³⁸ Nevertheless, Board members also advised that Chief Blair never denied information to the Board on the basis that the information was a matter of operations, even though most of the members viewed it as the Chief's prerogative to do so. As Chair Mukherjee told us:

Well, today, I think it's contributed to the relationship of common interest or trust because strictly legally, the Board was not entitled to that information and the Chief could quite formally have said 'sorry, it's such an operational matter, I can't tell you.' Instead, he chose to make that leap and say 'you are my Board. I'm going to tell you some things.' And that was, that had been the nature of the relationship.³⁹

It is important to note, however, that the Board was generally of the view that the G20 Summit was an exception in this regard (more about which will be said below). In his interview, the Chief stated that while he would generally not provide the Board with all the details concerning a particular operational matter, he would give what, in his assessment, was "enough information" to keep the Board informed.⁴⁰ Chief Blair also stated that there are at least two situations in which he has refused to be completely forthcoming with the Board with regard to operational matters. The first related to operational matters that are highly sensitive and confidential. In these situations, the Chief stated that he is "precluded by law" from sharing this information with the Board because they do not have the security clearance required to have access to this information.⁴¹ According to Chief Blair, the oath of secrecy that each Board member must take is insufficient to satisfy these security clearance requirements. Second, the Chief would not discuss certain matters by virtue of the fact that the Board is not involved in the day-to-day operations of the Toronto Police Service. While the Chief would divulge whatever pieces of information he believed would be of interest to the Board, he would not discuss these day-to-day operational issues in detail. Chair Mukherjee agreed with the Chief's assessment, noting that the Board can "have no say on policing operation decisions."⁴²

In this area, it would seem that the balance required for effective civilian oversight has not been achieved. The Board's complacency in allowing the Chief to decide what information it should or should not receive on operational or other matters is unacceptable and shows a misunderstanding

³⁷ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 56-57; Review's Interview with Judi Cohen (12 September 2011, Toronto) at 58-61; Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 33; Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 33; Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 85.

³⁸ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 52-54.

³⁹ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 86.

⁴⁰ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 42.

⁴¹ Review's Interview with Chief William Blair (11 November 2011, Toronto) at 48.

⁴² Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 47.

of the *Police Services Act*. For instance, one Board member stated during the interview process that he not only relied on the Chief's expertise to ensure that the Board was fully briefed at the appropriate time about various aspects of the G20 Summit but was also of the view that it was appropriate for the Board to play a secondary role in relation to the Toronto Police Service's G20 Summit planning and policing activities:

As a Board member, again, I basically relied on the Chief's expertise, okay? He was the one that was staging, the [Toronto Police Service] was staging this event; it was under their control, I thought, and I was looking as this request [for special funding] and saying 'now are they reasonable requests and should we make sure that he has the funds or he has the equipment necessary. What do we need to do to make sure that we provide him with whatever he needs to pull this off?'

....

What would be the Board's role during the Summit...the Chief would have made it clear that the Board's role was not to meddle..., during the Summit. I just didn't see it as one of our roles. Other people on the Board may have seen it as their role. I didn't. And so the questions were by and large answered to my satisfaction because I just accepted the fact that this was one of those types of things that are very difficult for someone to get involved in from an oversight point of view, because you can't predict what's going to happen.⁴³

This dynamic, whereby the Board resists even seeking and obtaining details about operational matters, seems to be affirmed by the advice of legal counsel to the Board, who may, at times, have warned the Board from seeking information on such matters. As Board Member and City Councillor Frank Di Giorgio noted:

Yes, I thought [counsel to the Board] also had an inclination to be concerned about how certain things might impact the Chief. Now I'm not sure, I never really gave it a lot consideration because we were all as Board members making sure that the Chief was not under any risk because of whatever decisions we might have made that might have impacted him. *You know, [counsel] might have stepped in to say, 'You know that's an operational issue, maybe you guys shouldn't be infringing on that particular right of the Chief'. He might have on occasion said something like that just to remind us. And in that sense, he's reminding the Board as someone who represents the Board to say, 'You know you guys maybe are straying a little bit away from your responsibility'.*⁴⁴

Despite this ongoing reluctance to obtain information on operational matters, Chair Mukherjee suggested that the Board has made significant strides in demanding operational information from the Toronto Police Service. One example the Chair and the other Board members commonly

⁴³ Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 58-60.

⁴⁴ Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 14 [emphasis added].

referred to is the budgetary process, suggesting that through this process, the Board has been successful in obtaining access to information that is operational in nature.⁴⁵

Putting the example of budget information to the side, it is clear from my review of the information-exchange practices of the Board and the Toronto Police Service that the Board's continued reluctance to request and obtain information relating to operational matters has led to a breakdown in communication between the Board and the Toronto Police Service. As I said in *Chapter 1 – The Legislation that Governs the Toronto Police Services Board and the Toronto Police Service*, the *Police Services Act* does not impose any limit on the information that the Board can obtain from the Chief or the Toronto Police Service. The only prohibition is in s. 31(4). It prohibits the Board from directing the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

Where the Board determines that it is not satisfied with the information being provided, either in form or substance, it must not hesitate to direct the Chief to provide that information. The Board has a duty to demand of the Chief the information it considers necessary to carry out the responsibilities assigned to it under the *Police Services Act*. As will be discussed in more detail below, the recent experience with the G20 Summit in Toronto has underscored the problems highlighted in this section concerning the general information sharing practices of the Board and the importance of developing a culture that is founded on the cooperative exchange of information, operational or otherwise, between the Toronto Police Service and the Board.

PART II INFORMATION EXCHANGE BETWEEN THE TORONTO POLICE SERVICE AND THE BOARD IN THE LEAD UP TO THE G20 SUMMIT

A. OVERVIEW OF THE BRIEFINGS AND INFORMATION PROVIDED TO THE BOARD CONCERNING POLICING FOR THE G20 SUMMIT

The Board held fifteen (15) separate meetings between December 17, 2009 and June 29, 2010 – certainly more than the average one meeting per month that is its usual practice. Chief Blair or his representative and each member of the Board were generally in attendance at all fifteen meetings. The first of these meetings was held shortly after the Government of Canada publicly announced that the G20 Summit would be held in Toronto. At this time, the specific location at which the event would be hosted in Toronto had not yet been determined or announced.

It is important to note that, for the most part, it was at these meetings that the majority of the information concerning the policing of the G20 Summit came to the Board's attention. As I have mentioned in *Chapter 2 - Civilian Oversight in Policing*, effective consultation between the Board and the Toronto Police Service rests on the flow of relevant information between these two stakeholders. Without information, Board members may not have a sense of what policing issues

⁴⁵ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 26-27; Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 62; Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 89-90.

or challenges the Toronto Police Service are facing, and as a result, may not be able to effectively discharge their mandate to create policies which help frame policing operations.

The information the Board was provided with regard to the framework and policing plans and objectives for the G20 Summit was a critical factual matter as the Board could only act on the information it had. Of equal importance is what information the Board did not have in the months leading up to the G20 Summit. Given the significance of these two matters, I first provide a general chronological overview of the information discussed at each of the Board meetings that took place during the time planning for the G20 Summit was underway. After this chronology is set out, I will provide a more detailed review of the information provided to the Board concerning specific issues related to the G20 Summit. The main information sources for what follows are the minutes of Board meetings and the reports or other documents filed as part of those meetings. To some extent, this information will be supplemented by the recollections of those whom we interviewed.

i. Board Meeting of December 17, 2009 – Closed and Open Meeting⁴⁶

An open Board meeting was scheduled for December 17, 2009 to approve the Chief's 2010 budget submission. Prior to the meeting, Chief Blair requested an opportunity to speak to the Board in-camera on the impact that any reductions to the budget would have on the Toronto Police Service's ability to deliver adequate and effective public safety services in the city of Toronto. In particular, Chief Blair noted that if the Toronto Police Service was required to achieve a 5% reduction in 2010, a hiring freeze coupled with lay-offs of up to 250 police officers would be necessary. The Chief suggested that this lay-off process would take years to resolve and would come at a great cost to the Board.

Although not on the agenda, during the closed portion of the meeting, the Board raised concerns regarding the financial impact of the G8/G20 Summits and inquired as to "whether any federal and provincial downloading of policing responsibilities could be uploaded." The specific details of these concerns are not articulated in the meeting minutes, nor does it appear that the Board received a response to its question. In the budget request presented by Chief Blair, which was discussed at the open meeting that followed, only one small portion was devoted to the potential impact of the G8/G20 Summits. In this section, Chief Blair simply said that "the Service is in ongoing discussions with the federal government representatives to determine the potential financial exposure to the Service and the City." There was no indication that the Board asked any questions of, or sought further information from, the Chief about the impact, financial or otherwise, that the G20 Summit could have on the Toronto Police Service. This is despite being aware, at this time, of Prime Minister Harper's announcement on December 7, 2009 that the city of Toronto would host the G20 Summit.

It is somewhat perplexing that, in the first instance when the G8/G20 Summits were raised in a Board meeting by the Chief, the Board did not ask any questions about what would be involved in

⁴⁶ Toronto Police Services Board Minutes (17 December 2009) (Closed and Open Meeting), Item #P335 and #C369, respectively, "2010 Operating Budget Submission."

planning for the policing of the event, or any questions about how the Toronto Police Service's role was going to be determined. As I have discussed in *Chapter 3 – The Planning and Policing Framework for the G20 Summit*, shortly after the official public announcement on December 7, 2009, the Integrated Security Unit (“ISU”) partners, including the Toronto Police Service, met to start planning for the event based on certain assumptions, one of which was the possible location of the G20 Summit meeting. It was the role of the ISU, as the central coordinating body for the G8 and G20 Summits, to plan and coordinate security issues related to the Summits. The December 17, 2009 Board meeting minutes do not show that these assumptions, which had already been supplied by the Royal Canadian Mounted Police (“RCMP”) to the Toronto Police Service in early October 2009, were discussed with the Board.⁴⁷

ii. Board Meeting of January 21, 2010 – Closed Meeting⁴⁸

At its first meeting of 2010, the Board was in receipt of a report from Chief Blair concerning the 2010 G8 and G20 Summit meetings. The purpose of Chief Blair's report was to advise the Board on the impact the policing of these events would have on the Toronto Police Service. The minutes of this meeting indicate that the Board discussed the report with Chief Blair and the Toronto Police Service's Chief Administrative Officer.

It is clear that the report's main focus was the estimated financial costs to the Toronto Police Service associated with policing the G8/G20 Summit meetings. In particular, the report highlighted the various types of costs that would be incurred, including staffing requirements and the procurement of special equipment. The report mentioned that some type of funding from the Government of Canada may be available. The report also advised that the costs that would have to be incurred may create pressure on the Toronto Police Service's operating budget. Finally, the report articulated a desire to ensure that the Toronto Police Service could deliver adequate and effective public safety services during the G20 Summit and, at the same time, support the RCMP in their mandate to ensure the safety and security of the Summit delegates.

Even though this was the first time the Board had formally received information about the Toronto Police Service's role in the policing of the G20 Summit, the Board expressed concern only about the financial impact that the G8/G20 Summits would have on the Toronto Police Service's operating budget in the absence of a formal funding commitment from the federal government. In that regard, the Board agreed to support the approval of funding requests for equipment and other resources and expedite the conclusion of a formal memorandum of understanding with the Government of Canada.

⁴⁷ Toronto Police Service Memorandum (19 October, 2009) “Planning Update – 2009/10/20”; E-mail from RCMP to Toronto Police Service (9 October 2009) at 01:05, re G8/G20 Planning Assumptions.

⁴⁸ Toronto Police Services Board Minutes of January 21, 2010 (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meeting - Impact on the Toronto Police Service.”

iii. Board Meeting of February 18, 2010 – Closed Meeting⁴⁹

The Board met again on February 18, 2010 to review and discuss correspondence received from a federal government official to Chief Blair, in response to the Toronto Police Service's request for a funding commitment from the federal government for the policing costs associated with the G8/G20 Summits. In his correspondence, the government official assured the Toronto Police Service that the Government of Canada would "provide financial assistance through contribution agreements for the reimbursement of all eligible incremental policing and security costs incurred by the Toronto Police Service and the City of Toronto as a result of holding two major international events in June 2010."⁵⁰ I note for completeness of the chronology that this Board meeting took place the day before the Government of Canada publicly announced, on February 19, 2010, that the Metro Toronto Convention Centre ("MTCC") would be the venue for the G20 Summit.

Chief Blair began the meeting by providing an overview of recent events and information obtained regarding the G20 Summit. He advised the Board that members of the Toronto Police Service had met with representatives from Public Safety Canada to stress the need for a commitment from the federal government to satisfy Toronto Police Service's funding requirements for the G20 Summit. Chief Blair also advised the Board that because of the short time frame remaining prior to the G20 Summit, the Toronto Police Service may be required to start immediately purchasing equipment and other resources prior to seeking the Board's approval, as would normally be the case. Chief Blair assured the Board that it would be advised of any such expenditure but that the city of Toronto and the federal government, without input from the Board or the Toronto Police Service, would decide who would bear the cost of these purchases.

At the meeting, the Board expressed concern about whether the procurement process for purchases related to the G8/G20 Summits would be in compliance with the Board's policies or the Toronto Police Service's procedures. Based on the minutes, this concern does not appear to have been addressed. Also, and for the first time since the Board learned that the G20 Summit would be held in Toronto, the Board voiced concerns about the adequacy and timing of the information it had received from Chief Blair and the Toronto Police Service in respect of the G8/G20 Summits. Specifically, the Board noted that it had not been briefed on certain aspects of the G8/G20 security operations that had been shared with members of the public, the Mayor, City staff, City councillors, community groups, and business improvement associations. In light of these concerns, the Board passed a motion directing "that briefings be held for all Board members by the Chief and/or the [ISU] as soon as possible to ensure that the Board receives the same information that is being shared externally" with other groups and individuals. The motion also required Chief Blair to provide the Board with the communications strategy the Toronto Police Service would use to transmit information to the public concerning the G20 Summit.

⁴⁹ Toronto Police Services Board Minutes (18 February 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting - Impact on the Toronto Police Service."

⁵⁰ Letter from Government of Canada to Chief William Blair (16 February 2010) attached to the Toronto Police Services Board Minutes (18 February 2010).

We determined that the incident that likely triggered the Board's request for more information was the public disclosure made regarding the location of the security fence for the G20 Summit. When Councillor McConnell became aware that this information had been disclosed by one of the Toronto Police Service's officers at a public meeting and realized that the Board had not yet been provided with this same information, she became concerned about the level of detail the Board was receiving. Councillor McConnell articulated this in her interview:

...I realized, that here we are, we've now told 44 plus a Mayor, members of Council, all of these details but I was just at the Police Services Board and none of the colleagues [know] any of that and it's been briefed now in private. I can't just walk up and say oh by the way, you know, guess what I learned in private...But the other part is that low and behold we get this public letter from our [Business Improvement Areas] that say here's where the fence is going to be and now Council doesn't know that and the Board doesn't know that, but somehow the [Business Improvement Area] seems to know it...

So these were very confusing times in terms of the exchange of information and also who ended up with information and who didn't.⁵¹

As I will discuss in more detail below, as a result of this meeting and the Board's concerns regarding the sharing of information, Board Staff recommended adding three standing items to the Board's agenda. The Chair agreed with the recommendation and directed the Chief to provide regular monthly updates to the Board on the following three matters relating to the G20 Summit: budget, procurement and other financial issues, community and media relations, and human resource issues.

iv. Board Meeting of March 8, 2010 – Special Open Meeting⁵²

A special public meeting of the Board occurred on March 8, 2010 to discuss, among other matters, Chief Blair's report dated February 26, 2010 regarding the procurement process. The purpose of the meeting was to obtain the Board's authorization in respect of several recommendations put forward by the Chief regarding the procurement of goods and services and the secondment of other municipal police forces for the policing of the G20 Summit. This was the first meeting held after the federal government publically announced on February 19, 2010 that the G20 Summit meetings would be held in downtown Toronto at the MTCC.

The report evidences the short time frame in which major expenditures needed to be made and important resources needed to be secured. In his report, the Chief sought to obtain the Board's authorization to: (i) make commitments or awards within the funding provided by City Council⁵³ for goods and services related to the provision of security for the G8/G20 Summits without the

⁵¹ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 110-113.

⁵² Toronto Police Services Board Minutes (8 March 2010) (Special Public Meeting), Item #P55, "G8/G20 Summit Meetings – Procurement Process."

⁵³ At meetings held on (22 and 23 February 2010) City Council approved additional funding for the 2010 Toronto Police Service budget to specifically address the additional costs of providing security for the G8/G20 Summits. The majority of the funding was allocated to cover the costs associated with salaries and benefits for staff resources.

Board's advance approval;⁵⁴ (ii) enter into any required agreements (in a form approved by the City of Toronto Solicitor) with other police services for the policing of the G20 Summit (such agreements typically require Board approval); and (iii) permit the Chief and the Chair to report to the Board at its August 2010 meeting on any actions taken under these authorizations. The Chief supported his recommendations for making these expenditures and entering into these agreements without specific Board approval by highlighting the need to obtain these resources expeditiously given the short time frame for planning the policing of this major event.

The Board approved all three recommendations put forward by Chief Blair.

v. Board Meeting of March 25, 2010 - Closed Meeting⁵⁵

Chief Blair was scheduled to provide his regular monthly update on the Toronto Police Service's preparations for the G8/G20 Summits during a closed meeting of the Board on March 25, 2010. Acting Chief Keith Forde attended the meeting on behalf of Chief Blair, who was out of town. Mr. Forde requested that the Board receive the update the following month. The Board agreed to defer consideration of an update until its next meeting, when Chief Blair would be in attendance.

The decision to defer the presentation of the update was made despite time being of the essence. The G20 Summit was planned to take place in three months and, to date, the Board had received only two updates on the Toronto Police Service's policing plans for the event, the bulk of which related to financial matters. In fact, to this point, the Board had received very little to no information about many important aspects of the actual policing of the event, such as what role the Toronto Police Service would play during the event in relation to the other policing partners, the command and control structure that would apply to the various policing partners, or to what extent the other police services seconded to assist in policing the G20 Summit would be subject to the Board's civilian oversight authority. Despite the lack of information on these critical policing matters, the Board made no attempt to request information from the Acting Chief or to direct the Acting Chief to obtain information from other sources, including, for instance, the Operations Commander or the Planning Team, and provide it to the Board before the next month's meeting. Rather, according to the minutes, the Board did not raise any concerns with the delayed reporting.

vi. Board Meeting of March 25, 2010 – Open Meeting⁵⁶

On the same day, the Board held a public meeting to receive and discuss Chair Mukherjee's March 4, 2010 report concerning then Board Member and City Councillor Adam Vaughan. According to the minutes, this was the only G20 related matter that was dealt with at the public

⁵⁴ The Toronto Police Services Board By-Law No. 147 (amended) requires, among other things, that the Board approve an award for over \$500,000 for goods/services where there is no vendor of record in place.

⁵⁵ Toronto Police Services Board Minutes (25 March 2010) (Closed Meeting), Item #C72, "Chief's Monthly Update on Preparations for the G8/G20 Summits."

⁵⁶ Toronto Police Services Board Minutes (25 March 2010) (Open Meeting), Item #P82, "Disposition Report – Review of Complaint Concerning the Conduct of Councillor Adam Vaughan."

meeting. The report concerned a complaint that Councillor Vaughan breached the Board's Code of Conduct Regulation as a result of a February 11, 2010 newsletter distributed to his constituents.

The minutes indicate that Councillor Vaughan responded to the complaint, both verbally and in writing, and indicated to the Board that any breach of the Code of Conduct Regulation was inadvertent. The Board determined that Councillor Vaughan's conduct constituted a "minor breach" of the Code of Conduct Regulation and Councillor Vaughan was cautioned as a result. As will be discussed in more detail later in this chapter, this complaint marked a significant and negative turning point in the flow of information concerning the G20 Summit between the Board and the Toronto Police Service.

vii. Board Meeting of April 22, 2010 – Closed Meeting⁵⁷

The previously deferred monthly update on the G20 Summit was provided to the Board at its closed meeting on April 22, 2010. The update included general information about the status of various issues related to the planning for the G20 Summit, including:

- the availability of adequate resources to maintain a safe, secure and lawful event;
- financial matters;
- the community outreach program;
- human resources management;
- identifying the key members of the Toronto Police Service's planning team and their federal and provincial counterparts;
- the special constables approval process; and
- the information provided was quite limited and general and there is no indication that the Board sought further information or clarification on any of these matters.

viii. Board Meeting of April 22, 2010 – Open Meeting⁵⁸

Following the closed meeting, the Board held a public meeting to address a report received from Chief Blair (dated April 9, 2010) regarding the appointment of RCMP officers and out of province police officers as special constables. The appointments would be made for the sole purpose of providing security at the G20 Summit. The report recommended that the Board grant the Chair

⁵⁷ Toronto Police Services Board Minutes (22 April 2010) (Closed Meeting), Item #C119, "Chief's Monthly Update on Preparations for the G8/G20 Summits."

⁵⁸ Toronto Police Services Board Minutes (22 April 2010) (Open Meeting), Item #P114, "Special Constables – RCMP Officers and Out-of-Province Municipal Police Officers providing security at the G20 Summit – Appointments."

and the Vice-Chair the authority to approve these appointments upon the written recommendation of the Chief.⁵⁹

The Board received a general overview of the statutory authority for appointing special constables and the powers conferred on police officers who receive such an appointment. The Board was also advised that Ontario's Ministry of Community Safety and Correctional Services had been consulted regarding this request and had agreed to an expedited appointment process which would apply to the G20 Summit only. It was made clear to the Board that an important component of the Toronto Police Service's security plan was to ensure that law enforcement personnel seconded to this event would be provided with the legal authority to enforce provincial statutes that may come into play during the policing of the G20 Summit (i.e. the *Highway Traffic Act*, *Trespass to Property Act*, etc.) and that conferring special constable status was the most efficient means to do this.

The minutes note that Deputy Chief A.J. Warr, Specialized Operations Command, was in attendance at the Board meeting to answer any questions the Board had regarding the report. The minutes show that the Board approved the report and the recommendation to appoint these officers as special constables for the period ending June 28, 2010 and that the Board did not ask any questions or make any requests for further information.

ix. Board Meeting of May 13, 2010 – Special Closed Meeting⁶⁰

A special closed meeting of the Board was held on May 13, 2010 to discuss correspondence received from the Toronto Police Association (dated May 12, 2010) regarding excess working hours for civilian employees during the G20 Summit. The minutes note that the Board was required to enter into a memorandum of agreement with the Toronto Police Association with respect to the modified work hours for these civilian employees. Accordingly, the Board passed a motion to provide standing authority to the Chair and the Vice-Chair to sign any agreement with the Toronto Police Association related to this matter and arising from policing for the G20 Summit. The Board also passed a motion directing the Chair to advise Board members of any such agreements and directing the Chief to ensure that all such agreements are included in the request for federal reimbursement of the G8/G20 expenditures.

x. Board Meeting of May 20, 2010 – Closed Meeting⁶¹

One week later, at the Board's closed meeting of May 20, 2010, Chief Blair provided his fourth monthly update on the preparations and plans for the G20 Summit. As with previous monthly updates, Chief Blair's update covered the following three issues: community and media relations,

⁵⁹ This specific authority was sought because it is typically the case that appointments of this nature are approved by the entire Board, rather than representatives of the Board. However, I was advised that the limited time available prior to the G20 Summit did not make entire Board approval feasible.

⁶⁰ Toronto Police Services Board Minutes (13 May 2010) (Special Closed Meeting), Item #C151, "Memorandum of Agreement – Excess Working Hours for Civilian Employees During the G20 Summit."

⁶¹ Toronto Police Services Board Minutes (20 May 2010) (Closed Meeting), Item #C159, "Chief's Monthly Update on Preparations for the G8/G20 Summits."

budgetary/financial and legal matters relating to the procurement of equipment and the contribution agreement with the federal government, and human resource issues.

Included among this information was a reference to the Toronto Police Service's request for legal authority to protect the property situated in and around the security fence during the G20 Summit. The written notes provided by the Chief to the Board in support of his briefing stated as follows: "We will be asking the Province for the authority to designate various properties and/or spaces situated within the city of Toronto to ensure that they are properly protected subject to acts of violence." Although I have confirmed that the legal authority referred to is the *Public Works Protection Act*, R.S.O. 1990, c. P.55 ("*PWPA*") there is no specific reference in the Chief's update or the minutes to the *PWPA* or any explanation of how it would operate or why certain locations in the city required special status under that legislation. Further, Councillor Vaughan stated in his interview that while he recalled the Chief raising this issue at the meeting, the Board was never provided with a copy of the *PWPA* or any of the communications between the Chief and the province regarding this request.⁶² The meeting minutes do not show that the Board asked any questions about this request for additional legal power, including questions regarding the status, scope, and implications of this request.

Although the Board was first advised on May 20th of the Chief's *intention* to make a request for these legal powers, by the time of this meeting, the Chief had already (on May 12, 2009) written to the provincial Minister to request, under the *PWPA*, that the "Lieutenant Governor in Council...designate the area of, or highways within, the intended security perimeter as a public work for the period from June 21, 2010 through the end of the Summit on June 27, 2010."⁶³ Chief Blair explained in his interview that the delay in informing the Board about the request was not intentional but was the result of certain administrative factors:

And I don't know when the written document [the Chief's report for the May 20, 2010 Board meeting] was submitted. We [the Chief and his staff] have to submit documents to the Board usually a few weeks in advance to make the agenda. So, the deadline for submission of documents to the Board in order to get on the agenda is usually two or three weeks in advance of that thing, otherwise it doesn't get on to the agenda.⁶⁴

The *PWPA* and the Chief's request for additional legal powers are discussed in more detail in *Chapter 10 – The Public Works Protection Act and Ontario Regulation 233/10*.

xi. Board Meeting of May 20, 2010 – Open Meeting

A public meeting was also held on May 20, 2010 to discuss Chief Blair's May 6, 2010 report regarding the retention of personal information used for registration cards for the G20 Summit. Registration cards were issued to residents who lived within the Interdiction Zone – one of four designated areas within the security fence surrounding the MTCC – to facilitate passage through

⁶² Review's Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 20.

⁶³ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services, dated 12 May 2009.

⁶⁴ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 85.

security checkpoints so that they could obtain access to their homes. It was recommended that the Board adopt a direction requiring the destruction of personal information collected by or on behalf of the Toronto Police Service by no later than June 29, 2010. This recommendation would not apply to personal information collected by the Toronto Police Service which related to an existing police investigation in respect of the G20 Summit.

This was the first meeting in which the Board was specifically advised of the ISU's plans to create a security perimeter fence in an area around the MTCC. It was also the first time the Board received specific information about the role that the Toronto Police Service would play in providing access to the secured zone inside the fence. The minutes show that this is also the first time that the Board was informed of the existence of the ISU and its composition. There is no mention in the minutes of the role of the ISU in coordinating all security-related planning issues for the G20 Summit, the identities of the other ISU partners, or the command and control structure that was being developed by the ISU partners for use during the event itself.

Aside from the general information summarized above, no specifics were provided to the Board during this meeting about the Toronto Police Service's designated responsibility for the areas in and outside the fence – the Interdiction Zone and the Outer Zone – nor were these areas identified or defined in Chief Blair's report to the Board. Rather, the focus of the meeting was to provide the Board with information and obtain direction regarding the retention and destruction of personal information. The Board approved the Chief's recommendation concerning the destruction of personal information.

xii. Board Meeting of June 4, 2010 – Special Closed Meeting⁶⁵

The Board called a special closed meeting on June 4, 2010, approximately three weeks before the G20 Summit weekend, to discuss the security arrangements that were being made and to receive Chief Blair's comments on the acquisition and use of long-range acoustic devices ("LRAD"). The LRAD is a device used by law enforcement personnel to send instructions and warnings to large crowds over long distances. At the meeting, Chair Mukherjee informed the Board of letters he received from members of the public who were concerned about the possible use of the LRAD by the Toronto Police Service. Chair Mukherjee also advised the Board that Ms. Cohen had prepared a report regarding equipment acquisition in preparation for the G20 Summit. Her report included a discussion about the LRAD.

Ms. Cohen's report suggested that the use of the LRAD by the Toronto Police Service raised two broad issues which required the Board's attention. The first issue was the Board's statutory responsibility for the budget. Ms. Cohen noted that, if equipment was being acquired on a permanent basis, the concern was whether this imposed future budget pressures on the Board. It was on this basis that Ms. Cohen recommended that the Chief report to the Board on the process and criteria used to determine whether equipment required specifically for the G8/G20 Summits would be retained permanently by the Toronto Police Service after the event.

⁶⁵ Toronto Police Services Board Minutes (4 June 2010) (Special Closed Meeting), Item #C182, "G20 Summit – Long-Range Acoustic Device and Equipment Acquisition."

The second issue related to the Board's responsibility to ensure the provision of adequate and effective policing. In this context, Ms. Cohen suggested that the Board had a responsibility to the community to determine what, if any, issues arose with respect to the potential use of the LRAD, whether the device would be considered a use of force, and to what extent the Toronto Police Service considered risk and liability issues in making the decision to acquire this piece of equipment.

In response to this report, Chief Blair advised the Board that the Toronto Police Service acquired the LRAD to be used as a communication device only and that the concerns raised by members of the public about the potential harmful effects of the device resulted from media reports that inaccurately described the device as a weapon or sound cannon. The Chief noted that the Ministry of Community Safety and Correctional Services had not classified the LRAD as a weapon and that the Toronto Police Service had recently and successfully used the LRAD as a communication tool during the execution of a search warrant. Chief Blair also informed the Board that the Toronto Police Service would not retain any equipment that was acquired for the G20 Summit, including the LRAD if it had future cost implications, without first reporting the costs associated with its retention to the Board.

Following this discussion, the Board decided to hold a special public meeting to assure the public that issues related to risk management, training, and budget in respect of the LRAD and other equipment procured for the G20 Summit had been reviewed by the Board. The Board agreed to hold this special open meeting on June 11, 2010.

xiii. Board Meeting of June 11, 2010 – Special Closed Meeting⁶⁶

The Board convened a special closed meeting on June 11, 2010 in response to Chair Mukherjee's report (dated June 10, 2010) recommending that the Board authorize the Chair and Vice-Chair to sign a memorandum of understanding with the federal government for the provision of overtime pay to senior officers performing duties directly related to the G8/G20 Summits between June 14 and 28, 2010. After a detailed discussion, the Board approved Chair Mukherjee's report, with a minor amendment to permit the Chair and any other member of the Board to execute the memorandum of understanding. Chair Mukherjee and Ms. Cohen executed the memorandum of understanding on behalf of the Board.

During the meeting, the Chair made several comments and observations about the scope and unique nature of the G20 Summit meetings in Toronto. He noted that this was the first time in history that the G8 and G20 Summits had occurred back to back and had been hosted by a single country. He also made reference to the little notice and preparation time given for planning the G20 Summit, stating that plans "had to be changed on the fly incessantly" primarily as a result of decisions made by the federal government and that the Toronto Police Service had to react and respond to these changes with "little opportunity to rest and regroup." The Chair also emphasized the significant role that the RCMP, Ontario Provincial Police ("OPP"), and Toronto Police Service

⁶⁶ Toronto Police Services Board Minutes (11 June 2010) (Special Closed Meeting), Item #C184, "Senior Officers' Organization – Temporary Compensation Accord for G8/G20 Summit."

would play in providing policing and public security services to all participants in the G20 Summit, while the Toronto Police Service would maintain continuity of its regular policing operations throughout the City of Toronto.

xiv. Board Meeting of June 11, 2010 – Special Open Meeting⁶⁷

a. The LRAD

The special open meeting to discuss the LRAD proceeded as scheduled on June 11, 2010. Chief Blair discussed the Toronto Police Service's intention of using the LRAD as a communication device during the G20 Summit and reference was made to the report submitted by Ms. Cohen in respect of it. The Chief advised the Board that the use of the LRAD would be necessary because loud halers and megaphones had proven not to be as effective when used to issue instructions to protestors in a demonstration that has become violent.

The Chief assured the Board that the LRAD would only be used during the G20 Summit in an extreme situation and only if a demonstration escalated to a potentially violent situation. In these cases, the Toronto Police Service would use the LRAD to communicate a warning to protestors that another use of force option may be used and that protestors should extricate themselves from a violent crowd. The Chief assured the Board that officers had received extensive training on the safe use of the LRAD. Finally, the Chief explained that only the Toronto Police Service G20 Incident Commander would have the authority to make the decision to deploy the LRAD during the event. Counsel to the Board advised the Board members of the Canadian Civil Liberties Association's application to the courts to determine the legality of some of the security measures related to the G20 Summit, which included a request for an interlocutory injunction regarding the use of the LRAD. Counsel to the Board indicated that this application would likely be heard before the G20 Summit.

Despite the various issues and concerns raised regarding the use of the LRAD, little action was actually taken by the Board. A motion requiring the Chief to provide a report to the Board on a policy with respect to the LRAD was withdrawn. A separate motion requiring the Chief to provide a report to the Board containing his comments and response to Ms. Cohen's recommendation that the Ministry of Community Safety and Correctional Services undertake a review of the LRAD did not pass. The one motion the Board did approve, which was not specific to the LRAD, required the Chief to report to the Board on the process and criteria used to determine whether equipment obtained for the G20 Summit would be permanently retained by the Toronto Police Service.

In addition to the information the Board received from Chief Blair, the Board received information from several persons who were in attendance at this meeting and delivered speeches or provided written submissions to the Board, including representatives from the Canadian Civil Liberties

⁶⁷ Toronto Police Services Board Minutes (11 June 2010) (Special Open Meeting), Item #P161, "G20 Summit – Preparations and Equipment Acquisition."

Association, the Toronto Police Accountability Coalition, the Hearing Foundation of Canada, and the Director of the Centre of Criminology at the University of Toronto.

b. Application of the Board's policies and the Toronto Police Service's procedures

At the same meeting, the Chief informed the Board that its policies and Toronto Police Service procedures would govern and extend to all aspects of policing of the G20 Summit and that the Toronto Police Service was of the view that "it is business as usual." The Board was also advised that its role to provide civilian oversight for the Toronto Police Service would continue in the usual manner and that its role extended to other police services, excluding the OPP and RCMP.⁶⁸ The Chief further advised the Board that any misconduct by police officers from an Ontario service would be dealt with in the manner prescribed under the *Police Services Act* but that officers from out of province would be subject to the legislation of their own jurisdiction. The Chief also informed the Board that all officers, internal or external to the Toronto Police Service, would be required to wear name identification and would be under the operational control of the Toronto Police Service.

c. Continuity of policing services

The Board also received a briefing from Chief Blair on the security preparations being made for the G20 Summit. This briefing included a discussion of the Toronto Police Service's intention to provide core policing services in the usual manner during the G20 Summit. The Board was also advised on the estimated number of police officers and civilian members that were required for the G20 Summit and the funding costs associated with equipment purchased for the event.

d. Community concerns regarding the deployment of tear gas

There was also a brief discussion about concerns raised by Councillor Vaughan regarding the deployment of tear gas during the G20 Summit and, in particular, the possibility of tear gas infiltrating ventilation systems of residential buildings. In response to these concerns, Chief Blair agreed to have Toronto Police Service members speak with building managers in the area to advise them on precautions that can be taken to ensure that the air quality in their building is not jeopardized should tear gas be used. During this discussion, Chief Blair also advised the Board that he did not believe that tear gas had ever been used by the Toronto Police Service and that with respect to the G20 Summit, tear gas would "only be used in a most extreme situation." As with the use of the LRAD, the Toronto Police Service G20 Incident Commander would be the only person authorized to approve the use of tear gas and such approval would be given only if the tear gas did "not affect people other than those on whom it was intended."

⁶⁸ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 64-65. Chair Alok Mukherjee advised that there was a typographical error in the Board minutes and clarified that the minutes should have read that the Board's role to provide civilian oversight did *not* extend to the OPP and RCMP.

xv. Board Meeting of June 29, 2010 – Closed Meeting⁶⁹

The last Board meeting at which the G20 Summit featured prominently took place after the event was over. Initially, Chief Blair was scheduled to provide the Board with a formal briefing on the G20 Summit. Instead, he responded to various questions posed by the Board about specific events that took place during the G20 Summit. Unfortunately, these questions and responses are not documented in the minutes.

B. CHALLENGES FACED BY THE BOARD CONCERNING THE FLOW OF INFORMATION ON G20 SUMMIT POLICING ISSUES

During the interview process, I asked each Board member whether the manner in which the Board received briefings related to the G20 Summit differed from previous briefings it received on other major events. The unanimous response was yes. Some Board members characterized this difference as one of “tone,” noting that there was a certain sense of urgency and importance in the briefings it received from the Chief in the lead up to the G20 Summit that was different from previous briefings it had received on other major events.⁷⁰ The general message being conveyed by this tone was that the Board’s role was to absorb quickly the information provided and limit its questions or requests for further details. As Councillor Vaughan stated:

We didn’t feel as a board that we were in total control of anything at this point. It was stuff that was happening, was happening quickly, and quite clearly, it was not, we were not scoping, our force wasn’t scoping the security detail. It was being scoped for us and we had to execute it. It [the G20 Summit] was a military operation and the person at the top was in charge and we simply had a responsibility, *we were raising our hands every now and then but you certainly got the feeling it wasn’t welcomed to ask questions like this let alone explore, let alone create policy because you are just being shut out of the process.*⁷¹

Board members also suggested that in some cases the Board was kept completely in the dark on certain issues related to both the planning and policing of the G20 Summit – issues that affect its ability to carry out its legislated mandate to oversee the police service, set policies for the effective management of the police service, and determine the objectives and priorities of the police service. Some Board members stated that they sometimes felt the Chief was quite “secretive” with the information he had about the G20 Summit.⁷² Board members speculated about the possible reasons for this sense of secrecy, including that: (i) the Chief himself was not provided with all of the relevant information about the G20; (ii) the Chief felt that he could not disclose certain information to the Board because of its confidential or sensitive nature; and/or (iii) in the Chief’s opinion, the information (i.e. operational matters) fell outside the scope of the Board’s legislated responsibilities. Chair Mukherjee noted in his interview that the Chief’s reluctance to disclose

⁶⁹ Toronto Police Services Board Minutes (29 June 2010) (Closed Meeting), Item #C192, “Chief’s Monthly Update on Preparations for the G8/G20 Summits.”

⁷⁰ Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 93.

⁷¹ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 49-50 [emphasis added].

⁷² Review’s Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 30-31 and 51-52; Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 80-81.

certain information related to the planning for the G20 Summit led to confusion on a number of important G20-related issues:

Well, I mean, that was the conversation, part of the conversation, in February, with the Chief. When I was trying to convince him that the Board needs to be informed on a regular basis and his point about disclosing information that could be sensitive, without confidence in the ability of Board members to keep matters confidential. There was never a discussion of where, or there was never any clarity about who had governance over this undertaking. Was it the Prime Minister's office? Had we simply rented out our cops to the federal government to carry out a federal project that happened to be in our city, and, if so, then what was the scope of our policies? There was a great deal of mixed messaging on those questions.⁷³

In one of his interview sessions, Chief Blair confirmed some of the difficulties or obstacles he faced in his ability to provide information to the Board concerning the G20 Summit. The Chief stated that these obstacles stemmed from the fact that, at certain points leading up to the G20 Summit, he had not yet been provided with all the available information and that he, like the Board, was learning things for the first time through the public or media reports.⁷⁴ The Chief also corroborated the Board's view regarding the provision of operational information, stating that he would not "normally" provide such information to the Board:

...there was certainly lots of information that was available to the service and I was being briefed on about operational matters and plans and preparations to deal with various operational matters and *I did not bring those before the Board, I would not normally do that.*⁷⁵

Another notable difference identified by the Board in the information sharing practices leading up to the G20 Summit was the actual method by which the information was transmitted to the Board. The information was provided - sometimes as a mass and sometimes only in small pieces - without any larger context.⁷⁶ Some members found it difficult to view or assess the information provided properly in the absence of this context. It also became a common practice for the Chief to deliver oral briefings or updates to the Board on the G20 Summit without providing a written report or supporting documentation related to this update or without having the item placed on the agenda in advance of the Board meeting.⁷⁷ While Chief Blair agreed during his interview that the manner in which the Board received briefings related to the G20 Summit was different from usual practice and he suggested that the difference was that communications in the lead up to the event were "more comprehensive":

In the overwhelming majority of cases, the Board receives no briefings at all on [operational events] and it requires none and asks no questions about it. It is only those

⁷³ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 116-117 [emphasis added].

⁷⁴ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 44-45.

⁷⁵ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 52-53 [emphasis added].

⁷⁶ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 93; Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 51-52.

⁷⁷ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 70.

extraordinary events, and certainly the G8/G20 was an extraordinary event, where we would actually engage in ongoing briefings to the Board and because there were a number of issues, not just arising through our briefings to the Board, but there were issues and discussions that were taking place in public forum[s], which caused the Board to have concerns and questions, and so we made it a point on a regular basis, making ourselves available to answer the Board's questions on that and provide information that we had at that point in time.⁷⁸

To at least some extent, the Chief's view of the comprehensive nature of briefings to the Board is not confirmed by the record. For example, the minutes of the February 18, 2010 closed meeting of the Board show that the Board was not provided with even the same information that members of the public and City of Toronto officials had been provided concerning the G20 Summit security preparations. This concern about lacking relevant information was articulated by various members of the Board in different ways at different times in the months preceding the G20 Summit. For instance, Councillor McConnell contacted the Board's Executive Director after the February 18, 2010 meeting to advise that "Council, earlier this week, received more detailed information about G8/G20 issues than has been provided to the Board."⁷⁹ Similarly, in March 2010, Mr. Grange sent an e-mail to the Board members, counsel to the Board, and Board Staff, in which he stated that "it seems just about everyone has been 'briefed' on the G8/G20 except the Board."⁸⁰

C. THE BOARD'S RESPONSE TO THESE CHALLENGES

The Board took active steps to address its concern about being 'out of the loop,' passing a motion at the February 18th meeting requiring a briefing to be held for all Board members as soon as possible to ensure that it was receiving at least as much information as was being shared externally. In response to the Board's expressed concerns, the Board Administrator recommended adding a standing item to each Board agenda that would require the Chief to brief the Board in respect of the G20 Summit security plans.

Following up on this recommendation, the Board's Executive Director drafted an e-mail for the Chair to send to Chief Blair, outlining three areas for these monthly briefings by the Chief to cover: (i) G8/G20 Summits budget, procurement, and other financial issues; (ii) G8/G20 Summits community and media relations issues; and (iii) G8/G20 Summits Toronto Police Service human resources issues.⁸¹ This e-mail was delivered to the Chair for his review. Other than Councillor Pam McConnell, who was copied on this correspondence and supported the suggestion as being a "reasonable way to proceed," no other Board members were advised or consulted by the Chair about these three standing briefing items. The Chair made one change to the introductory part to

⁷⁸ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 39.

⁷⁹ E-mail from Board Staff to Councillor Pam McConnell, Chair Alok Mukherjee and other Board Staff Members (26 February 2010).

⁸⁰ E-mail from Hamlin Grange to the Board, Board Staff and Judi Cohen (4 March 2010).

⁸¹ E-mail from Board Staff to Councillor Pam McConnell, Chair Alok Mukherjee other Board Staff Members (26 February 2010).

the draft e-mail, and then sent it to the Chief.⁸² The e-mail to Chief Blair, outlining the Board's expectation for future briefings, was as follows:

Good morning, Chief,

You will note in this month's confidential Board agenda that I have added the following item. This will be as a standard agenda item for updates in the confidential meetings beginning March 25 and concluding some time following the G8/G20. *The issues I have identified are those that concern the Board and include no confidential, operational matters.*

It would be appreciated if a brief point form outline could be prepared each month so that it may be included in our confidential minutes file.

CHIEF'S MONTHLY UPDATE ON PREPARATIONS FOR THE G8/G20 SUMMITS:

Chief Blair will brief the Board on the following issues with respect to the G8/G20 preparations:

- budget, procurement and other financial issues
- community and media relations issues
- human resources issues

Thank you,

Alok⁸³

When asked during his interview why the Board would actively limit itself to receiving information on the G20 Summit in respect of only the three areas, Chair Mukherjee answered:

[These three issues were] based upon conversations between me and our executive director, our legal counsel Mr. Cohen, based on what I had heard from the Chief in terms of his concerns about briefing the Board that we agreed that *there were matter[s] that fall within the Board's purview and three areas that are identified here which the Board has direct control over and they are not operational matters*. So while the Chief may not want to provide operational information, these are very much areas that come directly under the Board's jurisdiction and he has an obligation to brief the Board on these issues. So there was a sequence of events that culminated in me telling the Chief on March the 16th that he has to brief the Board and here are areas which don't involve any significant confidential operational matters.⁸⁴

⁸² E-mail from Board Staff to Chair Alok Mukherjee (16 March 2010). The introductory portion of the e-mail that Chair Alok Mukherjee eliminated stated as follows: "I have added the following as a standard agenda item in the confidential meetings beginning March 25 and concluding some time following the G8/G20."

⁸³ E-mail from Chair Alok Mukherjee to Chief William Blair copy to Board Staff (16 March 2010) [emphasis added].

⁸⁴ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 13-14 [emphasis added].

What will become clear in the following section is that, whether intentional or not, the e-mail Chair Mukherjee sent to the Chief seems to have limited the nature and amount of information the Board was to receive in the lead up to the G20 Summit.

D. INFORMATION KNOWN BY THE BOARD REGARDING THE FRAMEWORK AND PLAN FOR POLICING THE G20 SUMMIT

The purpose of this section of the chapter is to examine precisely what information the Board was given or requested and obtained from the Toronto Police Service or other sources in respect of the framework and plan for policing the G20 Summit and whether that information was sufficient for it to carry out its legislative functions. I will also examine what role, if any, the Board played in considering and approving specific components of the overall plan for the G20 Summit and whether the role it played was appropriate in the circumstances. As will be shown later in detail, the Toronto Police Service's departure from its normal information sharing practices, combined with the Board's decision to restrict the areas of information it asked the Chief to share, resulted in the Board receiving very little information outside of what a board of directors of a corporation might typically receive – budget, inventory, and human resource information.

i. G20 Summit budget

a. Information provided to the Board

Funding commitments

The first substantive matter Chief Blair reported to the Board concerned the Toronto Police Service's budget for the G20 Summit. At the Board's confidential meeting on January 21, 2010, the second meeting after the official announcement that the G20 Summit would be held in Toronto, the Chief provided the Board with information on various funding and cost issues. The Chief's report stated that while the Toronto Police Service had not secured any funding for its involvement in the Summit, the estimated gross non-salary cost was \$50 million. The report also stated that the Toronto Police Service would likely have to make its own funding commitments and expenditures in the absence of a formal funding commitment and signed agreement with the federal government (Public Safety Canada), which was not expected until the end of April 2010. The Chief's report included specific cost estimates for significant expenditures required for the Toronto Police Service's involvement in the G20 Summit. These included various infrastructure costs, such as the development of a Prisoner Processing Centre ("PPC"), costs associated with the creation of a Major Incident Command Centre ("MICC"), upgrading the radio infrastructure, purchasing Closed-Circuit Television ("CCTV") cameras and other items.

In the months leading up to the Summit, the Chief continued to provide the Board with updates on the federal funding commitment and some information on other budgetary and financial issues. For example, at the February 18, 2010 closed meeting of the Board, the Chief provided a copy of the correspondence received from the Government of Canada confirming that the federal government would provide financial assistance to the Toronto Police Service through contribution agreements.

Financial agreements

At the May 20, 2010 Board meeting, Chief Blair informed the Board that the Toronto Police Service had received an unsigned contribution agreement from the Government of Canada which, once signed by the federal government, would be forwarded to the Board for approval. The Chief informed the Board that the agreement would enable the Toronto Police Service to submit claims for appropriate costs incurred to date. At the June 11, 2010 special public meeting of the Board, the Chief stated that a Toronto Police Service budget of \$122 million, which included \$82 million for salaries, was approved by Toronto City Council for the policing of the G20 Summit and that the entire amount would be repaid by the federal government pursuant to the contribution agreement.⁸⁵

Chair Mukherjee (on behalf of the Board) signed both the contribution agreement and an amended contribution agreement (collectively the "Contribution Agreements") with the Government of Canada.⁸⁶ The Contribution Agreements provided that the maximum amount that the Government of Canada would contribute to the Toronto Police Service for the "reimbursement of incremental, extraordinary, justifiable and reasonable policing and security costs" incurred in relation to the G8 and G20 Summits was \$144,411,000.⁸⁷ Based on our interviews, it is clear that the other Board members did not know what process had been undertaken to negotiate the Contribution Agreements. With the exception of the Chair, Board members were never provided with an opportunity to review the Contribution Agreements in either draft or final form.⁸⁸

b. Questions asked or information requested by the Board

The Board meeting minutes that address the G20 Summit budget do not indicate that the Board asked any questions or requested additional information from the Chief on any of the financial issues raised. For example, no request was made for any documentation to support the federal government's funding commitment or the estimated infrastructure and equipment costs put forward by the Toronto Police Service. The Board also did not ask questions to probe whether the \$122 million budget ultimately approved by Toronto City Council would be sufficient to provide adequate and effective police services during the G20 Summit. In fact, the record demonstrates that, quite the opposite from the role the Board typically plays in evaluating and approving the Toronto Police Service's annual budget, the Board really played no substantive role in developing or evaluating the Toronto Police Service's G20 Summit budget.

⁸⁵ Toronto Police Services Board Minutes (11 June 2010) (Special Open Meeting), Item #P161, "G20 Summit – Preparations and Equipment Acquisition."

⁸⁶ The original contribution agreement ("Original Agreement") was signed by Chair Alok Mukherjee on 11 June 2010 and only covered the expenses and costs associated with hosting the G8 Summit. The Original Agreement was later amended and signed by the Chair on 3 August 2010 after the G20 Summit was over, to include the costs associated with policing the G20 Summit ("Amended Agreement"). It was this Amended Agreement which contained the total estimated costs and contingency of \$144,411,000. The Original Agreement and Amended Agreement are collectively referred to as the "Contribution Agreements" throughout this chapter.

⁸⁷ Contribution Agreement, dated 11 June 2010, s. 1.1.

⁸⁸ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 162-163; Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 162-163; Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 115-116.

c. Adequacy of the information provided or requested

Under each of the Terms of Reference that I identified for discussion in this chapter, I have been asked to assess the adequacy of the information the Board received related to the planning and policing of the G20 Summit. In particular, I am to analyze whether the information the Board possessed was sufficient for it to discharge its responsibility for the Toronto Police Service's adequate and effective policing during the G20 Summit.

Funding commitments

The Board received a fair number of regular updates and information in respect of the budget for the G20 Summit. Budget matters for the Summit were one of three items the Board specifically asked the Chief to include in his regular monthly updates. However, the Board did make one decision that may have curtailed the amount of information on budget matters it would have otherwise been provided. On March 8, 2010, the Chief requested that the Board permit the Toronto Police Service to procure equipment and other resources directly and without prior Board approval.⁸⁹ In his request, the Chief recognized that this arrangement would be unique and inconsistent with the Board's By-law No. 147 (amended) ("Financial Control By-Law") concerning procurement and financial control of goods and services, which required the Board to approve specific Toronto Police Service expenditures over \$500,000.⁹⁰ The Board ultimately approved the Chief's request.

In her interview, Ms. Cohen stated that timing played a big part in the Board's decision to suspend the operation of its Financial Control By-law and permit the Chief to procure equipment and other resources without prior Board approval:

The Chair was given authority to move forward with these exceptional circumstances and then the communication, virtually stopped and we were told that you know, it was going to be...and afterwards we'll tell you what we did because we're in a big hurry now. So, the time issue became critical and should we have done that? Probably not. Could the event have taken place in Toronto had we gone through a regular process? I don't think it could have, I don't think that the Service could have been prepared and could have acquired all of the equipment and everything else it deemed necessary under regular procurement process. Should have that process had more eyes on it? More hands on it? More scrutiny as it proceeded? Yes.⁹¹

The short timeframe may have required the Board to make an adjustment to its usual procurement practices and it may have been more practical to delegate to the Chief the authority to procure

⁸⁹ Toronto Police Services Board Minutes (8 March 2010) (Special Public Meeting), Item #P55, "G8/G20 Summit Meetings – Procurement Process."

⁹⁰ Toronto Police Services Board By-Law No. 147, s. 17 (1)(a) and 17(5), *To confer certain authorities and responsibilities with respect to the appropriation and commitment of funds by, and the payment of accounts of, the Toronto Police Services Board, and other related matters*, found in the Toronto Police Services Board Minutes (29 May 2003) (Public Meeting), Item #P131, "Amendments to the *Criminal Code of Canada* with regard to firearm-related crimes and the administration of the legislation related to firearms."

⁹¹ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 72 [emphasis added].

items without prior approval. Nevertheless, the Board should have imposed safeguards to ensure it was kept informed of purchasing decisions so it could exercise oversight where appropriate. At the very least, the Board should have required that the Chief include in his monthly updates to the Board, information on what expenditures were being made, why they were being made, and the estimated cost of these expenditures so that the Board could monitor these costs. Instead, the Board agreed to a system where all information regarding procurement would be provided to it only after the G20 Summit was over. At that point, there would be little or no ability for the Board to evaluate and question these procurement decisions in a meaningful way.

The Board's failure to ask questions and its decision to limit the flow of information concerning G20 Summit expenditures was unfortunate. The Board had access to far more information than it sought. Chief Blair was willing to provide the Board with the information it requested. While a lack of time was a relevant consideration, it does not explain the Board's decision to remove itself as a recipient of relevant information that was available. The effect of this decision was that the Board deprived itself of the information it required to discharge its budgetary oversight function.

Recommendation No. 18: Where time is of the essence for procurement, the Board must maintain a monitoring role

While specific timing issues may require the Board to pre-authorize certain expenditures in order to hasten the procurement of equipment and other supplies, the Board should maintain an oversight role with regard to this process. Where time is of the essence and the Board decides to suspend or alter its usual procurement practices, the Board should establish a process that will ensure it receives relevant information from the Toronto Police Service regarding the purpose and justification of all expenditures.

Financial agreements

The Board was not involved in the negotiation of the Contribution Agreements. It also did not request specific legal advice concerning the potential implications of the Contribution Agreements. The Board was unaware, therefore, of the risks associated with the cost recovery scheme for the G20 Summit.

The Board did not know or appreciate many significant issues associated with the Contribution Agreements, including, for example: (i) that it gave the federal government the right to evaluate the Toronto Police Service's performance at the G20 Summit on the basis of certain key performance indicators; (ii) that the key performance indicators were specified in the Contribution Agreements; or (iii) that there was no clear process explaining how performance would specifically be measured under each of the key performance indicators.⁹² Perhaps most

⁹² Contribution Agreement, dated 11 June 2010, ss. 4.1 and 8.1. As noted above, the Contribution Agreement, dated 11 June 2010 was later amended to include costs incurred in support of the G20 Summit.

importantly, the Board did not understand or appreciate that the ability to recover funds from the federal government could be compromised if the federal government concluded that any one of the key performance indicators had not been achieved to its satisfaction. Without all of this information, the Board was not in a position to assess properly the risks of entering into the Contribution Agreements, including the real risk that funds spent on the Toronto Police Service's involvement in the G20 Summit might not be recovered from the federal government.

Recommendation No. 19: The Board should be involved in the negotiation of contribution agreements pertaining to the Toronto Police Service's involvement in a policing event

Where a contribution agreement with a government entity will determine the recovery of costs applicable to the Toronto Police Service's involvement in a policing event, the Board must be involved in the negotiation of the contribution agreement. The Board should also obtain legal advice concerning the Board's financial exposure as a result of the contribution agreement and, in particular, whether there are any provisions that may place at risk the Board's ability to recover all funds spent for the policing event.

ii. The role of the ISU and the ISU Partners

a. Information provided to the Board

The Role of the ISU

The role and function of the ISU is described in *Chapter 3 – The Planning and Policing Framework for the G20 Summit*.

Based on the record, the Board received very little information about the ISU and, like many others, had a very limited and inadequate understanding of the role and function of the ISU. This misunderstanding continued during the days of the G20 Summit itself.

The first time that the ISU is mentioned in the Board minutes is on May 20, 2010, just over a month before the actual G20 Summit. Chair Mukherjee commented on the delayed timing of the information provided to the Board regarding the ISU stating in his interview that “it was quite late in the day when we understood that there was something called [the] ISU.”⁹³ In the May 20th Board meeting minutes, there is no discussion about the role of the ISU and its mandate or about the other ISU partners and their assigned roles. The only other time the ISU is mentioned is in an e-mail from Chair Mukherjee to Mr. Grange in response to certain media reports regarding the use of equipment during the G20 Summit. In the introductory portion of that e-mail the Chair states:

⁹³ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 109.

The problem right now is that we are dealing with a federal event being planned by a federal Internal Security Unit. [Toronto Police Service] is a big part of it, but not the only decision maker. It will, however, carry the can when things go wrong – not if, because they will, as they have in every G8/G20 event.⁹⁴

Toronto Police Service's Role within the ISU

In addition to the ISU as a whole, the Board received very little information about the role of the Toronto Police Service in the ISU structure. In fact, the Board never really seemed to have complete knowledge of the Toronto Police Service's particular policing responsibilities during the event. At its closed meeting on January 21, 2010, Chief Blair reported to the Board that the RCMP would be the lead agency for the G8/G20 Summits. The Chief further advised that the RCMP would be supported by the Toronto Police Service, OPP, Peel Regional Police, Canadian Forces, and other police services from across Canada. At this meeting, the Chief noted that the Toronto Police Service's objectives for the G20 Summit had been defined as assisting in the protection of the G20 Summit delegates as well as securing the outside perimeter of the event venue and certain other sites.

b. Questions asked or information requested by the Board

According to the record, the only time the Board asked any questions about the role of the ISU or the role of the Toronto Police Service or other security partners within the ISU structure was in an e-mail exchange which occurred on the Sunday of the G20 Summit and the following Monday in response to the kettling incident at Queen and Spadina.

Adam Vaughan: Who is in directing the isu right now? Is it Chief Blair or is it someone else. The last briefing we got in public suggested that [Toronto Police Service] was in charge outside the fence. What has changed?

Hamlin Grange: Good question Adam.

Chair Mukherjee: Good question. The [Toronto Police Service] may be in charge of security outside the zoo, but ISU is responsible for planning. It includes several players.

Judi Cohen: Will the ISU be served with lawsuits, all forces, or just us since it is all happening here and the Chief appeared to be in charge, at least up until last night. Today, it was suggested by the media that the OPP was in charge of the Queen/Spadina situation.⁹⁵

This e-mail exchange makes clear that even in the midst of the G20 Summit, the Board still did know what the ISU's mandate and role was. Another example of the Board's confusion about the ISU's function during the G20 Summit is evidenced in an e-mail between Chair Mukherjee and Mr. Grange on the Friday before the G20 Summit weekend. In response to a question from Mr.

⁹⁴ E-mail from Chair Alok Mukherjee to Hamlin Grange (28 May 2010).

⁹⁵ E-mail between Councillor Adam Vaughan, Hamlin Grange, Judi Cohen and Chair Alok Mukherjee (copy to the other Board members and Board Staff) (27-28 June 2010).

Grange regarding whether the Board had “observer” status in the MICC, the Chair states “No, because it is the jurisdiction of the ISU, not Toronto Police Service and it is where tactical decisions are made.”⁹⁶

c. Adequacy of the information provided or requested

Looking at the record as a whole, I conclude that a major cause of the Board’s misunderstanding of the role of the ISU and the ISU partners, including the Toronto Police Service, was that it did not seek further information from the Chief or other sources when the opportunity was available. While Chair Mukherjee was aware that the ISU played a role in the planning of the G20 Summit, both he and the Board were generally under the misapprehension that the ISU was also the “umbrella” for the G20 Summit under which all the other police services or ISU partners converged.⁹⁷ The Board really did not seem to understand how policing decisions during the event were being made, or to put it another way, the Board never really knew who was actually ‘in charge.’

In addition, Board members were unable to provide any detail during their interviews regarding the role of the Toronto Police Service during the planning of the G20 Summit, other than to confirm what information had already been provided to it during the Board meetings. There is nothing in the record that demonstrates that the Board understood the specific details of the Toronto Police Service’s policing responsibilities for the event, how the Toronto Police Service’s mandate during the G20 Summit was determined, or who in fact determined its mandate. It is clear that the Board did not know whether the Toronto Police Service had any input in determining what its policing role during the event would be. It is also clear that the Board never provided, or sought to provide, any input on this issue.

In fact, there seemed to be great uncertainty on the Board’s part concerning what, if any, role it was to play in the planning for the policing of the G20 Summit. Chair Mukherjee stated in his interview that “where the Board had any role to play...would depend on the extent of [Toronto Police Service’s] involvement since the Board only oversees the [Toronto Police Service] and none of the other entities.”⁹⁸ Even though the Chair felt that the proper role of the Board in the planning of the G20 Summit would be shaped and defined by the Toronto Police Service’s planning and policing responsibilities, there is no indication in the minutes or elsewhere that the Board ever asked the Chief to provide detailed information about what the Toronto Police Service’s responsibilities actually were, both during the G20 Summit and within the ISU structure. It is unsettling that this specific matter was not among those listed for the Chief to regularly brief the Board on.

It is my view that, if the Board had turned its mind to certain issues and asked questions, it could have elicited information relevant to its understanding of how the planning and policing of the

⁹⁶ E-mail from Chair Alok Mukherjee to Hamlin Grange (25 June 2010).

⁹⁷ Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 81-82; Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 125-127.

⁹⁸ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 6-7.

G20 Summit was structured, who the key players were, and what role the Toronto Police Service was responsible for playing in both the planning process and during the event itself. Among the questions the Board could have, but did not ask, were the following:

- What was the specific function of the ISU? Was it solely responsible for planning the policing of the G20 Summit, or did it have a function during the event itself?
- If there was a disagreement between ISU partners concerning a particular aspect of the planning for the G20 Summit, how was this to be resolved?
- Was the Toronto Police Service subject to the direction of any other ISU partner with respect to its plans for the policing of the G20 Summit?
- Who made the decision that the Toronto Police Service would have responsibility for policing the Interdiction Zone and Outer Zone?
- What other policing responsibilities were assigned to the Toronto Police Service?

In the absence of the answers to these and other questions, the Board never had a sufficient understanding about the role of the ISU in respect of the planning and policing of the G20 Summit. Because the Board lacked the necessary information and was not in the loop on these issues, it never truly engaged the consultative process it should have with the Chief to determine what adequate and effective policing would be required in the circumstances of the G20 Summit. This meant that the Board never really reflected on what the Toronto Police Service's role was going to be or what it should be.

iii. Toronto Police Services Operational Plan and Mission Statement

a. Information provided to the Board

The Operational Plan

To prepare for the event, the Toronto Police Service produced an Operational Plan consisting of twenty-seven chapters. The chapters cover the various areas relevant to the policing of the G20 Summit, including, for example, chapters concerning the "Outer Zone," the "Public Order Unit," and the "Prisoner Processing Centre." In essence, the Operational Plan pulled together all of the detailed preparations and provided the specific direction that the Toronto Police Service wished to communicate to its various decision-makers as the event unfolded. Put another way, the Toronto Police Service Operational Plan served as the core document on which specific operational decisions made during the event would be based.

In his interview, Chief Blair noted that the Toronto Police Service did not advise or consult with the Board, nor did it solicit the Board's comments, feedback, or recommendations with regard to the development of the Toronto Police Service's Operational Plan for the policing of the G20 Summit. As mentioned, the Toronto Police Service did, however, brief the Board on certain particular aspects of the Operational Plan (e.g. acquisition of equipment, budgetary issues and financial constraints) and other matters that the Chief believed pertained to the Board's legislated mandate. Board Member Judi Cohen suggested that the reason the Board knew very little about

the nature of the policing that was going to be required for the G20 Summit was because the Chief stated that he was not in a position to discuss this information given its confidential nature:

We could never really get into any detailed discussions with the Chief on this because the Chief said he can't talk about it. The Chief always said, "I can't talk about this...it's confidential...."⁹⁹

Later in this chapter I address some of the concerns around the Chief sharing confidential or classified information with the Board and how the Board should address these concerns. Councillor Vaughan confirmed that while it was made clear to the Board that the Chief was required to create a security plan for the Toronto Police Service, details concerning how this plan was being developed as well as the plan itself, were never provided to the Board.¹⁰⁰ Moreover, the Board never asked to see the plan or to be provided any details concerning how it was being developed. As such, the Board did not know, for instance, whether the Toronto Police Service was developing this plan on their own or in conjunction with other security entities. Overall, any information the Board received in respect of the Toronto Police Service's Operational Plan was limited. This came as no surprise to at least one Board member, who indicated that he expected that the Toronto Police Service would not consult with the Board on operational matters because the "[*Police Services Act*] says they don't have to do it."¹⁰¹

The Project Charter and Toronto Police Service's Mission Statement

In addition to never having seen the Toronto Police Service's plans for the G20 Summit, the Board also never received the *Project Charter and Scope Statement* ("Project Charter") authored by the Toronto Police Service specifically for the event.¹⁰² The Project Charter was to "serve as a foundation, define a mission, and provide guidance for the members of the working group, stating mutually agreed upon budget, time constraints, risks, resources, and standards."¹⁰³ It defined the roles and responsibilities of the Project Charter team members and articulated the Toronto Police Service's mission statement for the G8/G20 Summits as follows:

The Toronto Police Service's mission for the 2010 G8/G20 Summits (Toronto events) is to develop, deliver and implement integrated security plans which:

Support the RCMP and their mandate ensuring the safety and security of the G8/G20 Summits delegations

Provide security commensurate to the threat level and the public nature of events involved with this visit

Ensure the safety and security of the public and law enforcement personnel

⁹⁹ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 64.

¹⁰⁰ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 49-50.

¹⁰¹ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 76-77.

¹⁰² The first draft of the Project Charter was completed in November 2009.

¹⁰³ Toronto Police Service, *Project Charter and Scope Statement: Project Name 2010 G8/G20 Summits* (24 September 2010) at 4.

Respect the democratic right of individuals to demonstrate and to create the right conditions for peaceful protest; and freedoms of thought, belief, opinion, expression and peaceful assembly, and

Minimize disruption and inconvenience for Toronto residents and businesses.¹⁰⁴

Importantly, the Project Charter: (i) provided an overview of the objectives and scope of the G8/G20 Summit; (ii) gave detailed background information about the event; (iii) described the various impacts policing for the event may have had on the Toronto Police Service; (iv) outlined specific potential risks to the Toronto Police Service as a result of its involvement in the event; and (v) provided an estimated cost to the Toronto Police Service for its involvement. Although the Project Charter provided details about the risks and costs of the G20 Summit and sought to establish that which was properly within the Board's jurisdiction under section 31(1) of the *Police Services Act* – to determine the objectives and priorities with respect to police services during the G20 Summit – the Board never saw the Project Charter.

b. Questions asked or information requested by the Board

Chief Blair indicated during his interview that he made himself available to answer the Board's questions about the Toronto Police Service's plans for policing the G20 Summit.¹⁰⁵ In addition, Chair Mukherjee was of the view that "Board members [had] ample opportunity to ask questions" of the Chief about G20 specific issues at the Board meetings.¹⁰⁶ While the Board was aware that the Toronto Police Service was working on some type of operational and security plan for the policing of the G20 Summit, it never asked to see the Toronto Police Service's Project Charter or Operational Plan, nor did it ask questions about the particulars of either document.

The record makes clear that at no time did the Board direct the Chief to provide it with drafts of these documents or a detailed briefing on their specifics in an attempt to gain a better understanding of the Toronto Police Service's plans for the G20 Summit. The Board also did not raise any concerns with the Chair or the Chief regarding the fact that the Board was not consulted in the development of the Toronto Police Service's plan and mission, despite its statutory role and responsibility to participate in the design of these plans.¹⁰⁷

c. Adequacy of the information provided or requested

The Toronto Police Service's Operational Plan was probably one of the most important documents related to the policing of the G20 Summit. Without a consultation between the Board and the Chief about what matters should be included in the plan, the Board had no way of evaluating whether it was required to implement policies or establish priorities and objectives for the Toronto

¹⁰⁴ Toronto Police Service, *Project Charter and Scope Statement: Project Name 2010 G8/G20 Summits* (24 September 2010), at 4.

¹⁰⁵ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 18-19.

¹⁰⁶ E-mail from Chair Alok Mukherjee to Hamlin Grange (28 May 2010).

¹⁰⁷ *Police Services Act*, R.S.O. 1990, c. P.15, s. 31(b) and (c)

Police Service, including defining the Toronto Police Service's 'mission' during the G20 Summit in order to ensure that adequate and effective policing services could be provided during the event.

In defining the mission for a particular operation, the Board should have initiated and engaged in a detailed consultative process with Chief Blair. While the chief of police is responsible for determining how to execute the operation, it is the Board's role to first define *what* the mission is and *what* the goals and objectives are for that mission. The Board simply did not have enough information to carry out its role. For example, decisions about how Toronto Police Service resources were to be allocated (e.g. what areas Toronto Police Service officers were responsible for policing during the G20 Summit) was a matter that was never specifically brought to the Board's attention and was not something raised by the Board with the Chief. However, it is possible that if this information had been provided, the Board may have sought to consult with the Chief about this issue, which could have resulted in a different decision being made about the deployment of Toronto Police Service officers during the G20 Summit.

Why, in an operation of this scope and importance, would the Board not have asked for more particular information? Unfortunately, the answers the Review obtained during the interviews suggest that the 'barrier' in the mind of Board members which prevented them from asking for more detailed information concerning the project scope and operational plans was the idea that it was somehow improper for the Board to even *know* this information. As opposed to being mindful of the precise and narrow prohibition in the *Police Services Act* – that is, that the Board never *direct* the Chief with respect to specific operational decisions – the Board actually cut itself off from relevant information it needed to fulfil its responsibilities. Accordingly, the Board did not ask for information and the Board did not know much of what there was to know. As a result, the Board was transformed from a key player in the delivery of policing services during the G20 Summit to a mere bystander.

While it was never properly within the Board's mandate to *approve* the specific operational strategies and plans for the Toronto Police Service's policing of the G20 Summit, the Board had every right – and, in my view, a responsibility – to obtain and consider available information concerning the operational objectives and plans so that it could make assessments that were at the core of its function. These could include, for example, whether:

- existing Board policies would be sufficient to give the Toronto Police Service necessary guidance in its operations during the G20 Summit;
- certain risks identified by the Toronto Police Service in its planning could be mitigated or eliminated, and if so, what steps needed to be taken in that regard; and
- the potential impacts on the Toronto Police Service as a result of its participation in the event could be appropriately addressed by existing resources or whether additional resources would be required.

These are just examples of how the Board could have used more information in order to fulfill its statutory function, without violating the prohibition in section 31(4) of the *Police Services Act*. Clearly, there is a wide and important range of decision-making areas where the Board's having access to detailed information, including operational information, is vital. Without this

information, the Board is not only limited in what it knows but in what it can do to ensure adequate and effective policing is provided in Toronto.

iv. The Command and Control Structure for the G20 Summit

a. Information provided to the Board

The Board knew next to nothing about the command and control structure that was developed for and was to be used during, the G20 Summit. Typically, a command and control structure aims to identify *who* can exercise *what* authority and direction over *which* assigned entities. The purpose of this structure is to focus efforts and resources, including the exchange of information, toward the achievement of the 'mission'.

Information about the command and control structure would include knowledge about who was ultimately in command of the Toronto Police Service during the G20 Summit, whether there would be any circumstances in which the Toronto Police Service would have to follow the command of another law enforcement entity, and whether the Toronto Police Service had the right to refuse an order issued by another law enforcement entity if, in its opinion, following the order could compromise its ability to effectively police the areas over which it had responsibility. In his interview, Councillor Di Giorgio made clear that the Board did not have information about these command and control issues:

Who gives the order? I don't know whether the RCMP gave an order, filtered down to the Chief, whether he acted on that order or whether he chose to deviate from that order, I don't know. Do you know what I mean? I really don't know how that chain of command...which is important to me. I actually believe that to be a very important thing because why should the Chief bear consequences of some decisions that he, or orders he gave, that were given really to somebody else.¹⁰⁸

According to Councillor Vaughan, the only information the Board received on the command and control structure was from the Chief during an oral briefing. At that briefing (the date of which was not communicated to the Review), the Board was provided with a high level overview of the hierarchical command and control model that had been developed and been reduced to writing in an agreement.¹⁰⁹ That agreement, however, titled the Command and Control document ("C2 document"), was never shared with the Board and the Board was never consulted about any aspect of the C2 document. The only other reference to the C2 document is in an e-mail from Councillor McConnell to Chair Mukherjee on May 28, 2010. In that e-mail, Councillor McConnell requests that the Chair notify the other Board members of a message she received from the City of Toronto's Strategic Communications Division advising that the ISU had released its security and transportation plans for the G20 Summit.¹¹⁰ Based on the record, this information does not appear to have been shared with the other Board members.

¹⁰⁸ Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 72-73.

¹⁰⁹ Review's Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 2-3.

¹¹⁰ E-mail from Councillor Pam McConnell to Chair Alok Mukherjee (28 May 2010).

As I discussed earlier in *Chapter 5 – Command and Control*, the C2 document described the command and control structure that was to be applied during the G8 and G20 Summits. It was the result of the integrated planning work of all the ISU partners. The C2 document includes an Annex “A,” which contains a “Levels of Authority Matrix.” This Matrix assigns to each ISU partner, including the Toronto Police Service, specific responsibilities and roles during the G20 Summit. The RCMP is deemed the lead security partner responsible for “overseeing security planning and operations as well as the coordination of operational security requirements with federal, provincial and municipal law enforcement agencies.”¹¹¹ As the lead security agency, the RCMP’s mandate was to provide protection to the visiting Internationally Protected Persons (“IPPs”) as well as to provide security within the designated security perimeter that was fenced and off limit to anyone without special clearance. The Matrix has the Toronto Police Service supporting the RCMP in protecting the IPPs and also ensuring the integrity of the Interdiction Zone.¹¹²

Although many decisions were made to develop the command and control structure, and a very detailed structure was outlined in the C2 document, the Board was not consulted about any of these decisions and did not really know any details about the decisions that were made and how, if at all, that would impact on the Toronto Police Service’s ability to provide adequate and effective police services in Toronto during the G20 Summit. Based on the limited information that was provided to it, and keeping in mind that the Board had never seen the C2 document before the G20 Summit, at least one member of the Board was of the view that, during the event, “the RCMP was in total command and gave the orders which were carried out by not only the OPP but also by the Toronto Police Service” and that the RCMP “were in total control of everything.”¹¹³ The Toronto Police Service never walked the Board through the types of policing decisions that might need to be made during the event, or, importantly, who among the different ISU partners would be authorized to make these decisions.

b. Questions asked or information requested by the Board

The Board received only a vague description of the command and control structure that was put in place for the policing of the G20 Summit. What is troubling is that, despite the dearth of information provided to the Board on this crucial matter – essentially the question of which police service was going to ‘call the shots’ when decisions needed to be made on the ground – there is no evidence to suggest that the Board made any inquiries or demanded further particulars of the Toronto Police Service or the Chief on this subject. The record simply does not reveal any attempt on the part of the Board to obtain additional information. In fact, although the Board was made aware of the existence of information that could provide this additional detail – such as a written agreement delineating the role of each of the ISU partners – the Board never made a request to see this information.

¹¹¹ Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), at 15.

¹¹² Integrated Security Unit, *2010 Summits Command and Control (C2) Document* (as approved 17 June 2010), at 16.

¹¹³ Review’s Interview with Hon. Hugh Locke (16 September 2011, Toronto) at 54 and 69-70.

c. Adequacy of the information provided or requested

The information contained in the C2 document, such as the strategic goals of the ISU partners, the responsibility of the federal, provincial, regional, and municipal police forces and the operational overview of the roles and responsibilities of each ISU partner was vital information that the Board should have had and understood. For instance, if the Board had been properly advised of the Toronto Police Service's responsibilities in the Interdiction Zone then it could have assessed whether the deployment of Toronto Police Service officers in this area, rather than RCMP, OPP, or other force's officers, would impact on the Toronto Police Service's ability to adequately and effectively provide police services in the Outer Zone or elsewhere in the city of Toronto. There is simply no good reason for the Toronto Police Service not to have communicated this information to the Board or for the Board not to ask for it.

The question of which police force would make decisions or give orders in the various zones of the G20 Summit is definitely an issue the Board should have been concerned with. The Board should have made the relevant inquiries to obtain sufficient information about the command and control structure so that it could, if it felt it was necessary, interject to help resolve any confusion about who was 'in charge.' Without having consulted with the Chief or taken steps to obtain information regarding the chain of command, the Board was not in a position to fulfill its legislative duty to ensure that the Toronto Police Service could adequately and effectively police the G20 Summit.

I conclude, based on the limited nature of the information provided to or acquired by the Board in regards to the command and control framework for the G20 Summit, that the Board did not have sufficient information to engage meaningfully in any consultation with the Chief on this matter. As a result, the Board was never in a position to provide useful input or make recommendations concerning whether the command and control structure formalized in the C2 document would facilitate or potentially hinder the provision of adequate and effective policing during the G20 Summit.

v. The Legal Framework for Policing the G20

a. Information provided to the Board

The Foreign Missions and International Organizations Act

In *Chapter 3 – The Planning and Policing Framework for the G20 Summit*, I provided an overview of the relevant sections of the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 ("FMIOA"), including the possible opportunity for the federal and provincial government to enter into an arrangement that would have set out the respective responsibilities of the policing partners involved in the G20 Summit. My review of the record confirms that the Board was not aware of the FMIOA or the ability to enter into any arrangement under the FMIOA. In particular, the Board had no knowledge of the discussions that had ensued between the

provincial and federal government on entering into an agreement under the *FMIOA* or that the request for such an agreement had been made by Ontario but was not accepted by the federal government on the basis that “it would not grant further authority to local police of jurisdiction.”¹¹⁴ Chief Blair confirmed that while he was aware of some discussions among the various ISU partners with respect to the *FMIOA*, he did not discuss this matter with the Board and never saw the correspondence between the provincial and federal government regarding an agreement under the *FMIOA*.¹¹⁵

The first time Board members familiarized themselves with the *FMIOA* was during the Review’s interview process. In his interview, Chair Mukherjee advised that, although he was unaware of the possibility of the province entering into an arrangement under the *FMIOA*, he was of the view that such an arrangement would have been helpful in understanding the role and responsibilities of the Toronto Police Service and, as a result, of the Board:

But the [*FMIOA*] agreement would have more clearly delineated different responsibilities and made it easier for the Board to know who to hold accountable for what and the kind of authority it could exercise over the Chief...The Board is struggling still to comprehend what the nature of the beast was. Had there been an agreement of which the Board was a party, we would have had a more clear understanding of what our expectations of our Chief should be or even the limits of the Chief’s power. I mean no Chief comes to you and tells you on his/her own that their power is not limitless. It’s kind of a surprise to me why the federal Deputy [Minister] would not want to have an agreement when [the] *FMIOA* says there should be an agreement.¹¹⁶

In *Chapter 3 – The Planning and Policing Framework for the G20 Summit*, I will provide additional detail regarding the request to enter into an arrangement under the *FMIOA*.

The Public Works Protection Act

As set out in the first part of this chapter, the Board was first informed about the *PWPA* request at the May 20, 2010 Board meeting. However, the minutes of that meeting suggest very little information was shared with the Board regarding the Chief’s actual request for additional powers under the *PWPA*. In his interview, Chief Blair stated that he recalled some discussion at this May 20th meeting about what he understood to be the rationale for the request:

My only recollection,...is that I advised them [the Board] that we [the Toronto Police Service] were in discussions with the province and that there was discussion about asking the province for that [*PWPA*] designation, but we weren’t asked for a justification for that. And I believe that I discussed that but I can’t say with absolute certainty and it’s

¹¹⁴ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 10; Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 52-54; and Letter from the Province of Ontario to the Government of Canada (7 May 2009).

¹¹⁵ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 5.

¹¹⁶ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 54-55.

certainly not indicated in...[the minutes] well this is only a summary of the written submission, but not the discussion that took place.¹¹⁷

Chief Blair confirmed in his interview that he did not discuss with the Board the legal opinion he had obtained on the *PWPA* because, in his view, counsel to the Board was in attendance at the meeting and available to assist the Board in addressing any concerns or issues with the request under the *PWPA*.¹¹⁸ Although the Board's legal counsel had been copied earlier on an e-mail from the City of Toronto Legal Services Office regarding the *PWPA* designation request, the record indicates that there was no discussion between the Board and its legal advisors concerning the *PWPA*.

The next time the *PWPA* was raised again for discussion by the Board was on the eve of the G20 Summit. On June 25, 2010, in response to media coverage regarding the request for additional legal powers under the *PWPA*, Chair Mukherjee sent an e-mail to the Board members to provide some background information to the request and to clarify what he viewed as certain inaccuracies in the media's reporting. Specifically, the Chair provided the Board with the following explanation for the Chief's request:

The province approved the [*PWPA*] regulation on June 2, reported it on June 14 and published it [on] e-Law[s] on June 16. Any lawyer, or anyone else, could have found it [on] e-Law[s] as of that date.

As to the claim that our Chief demanded [the regulation,] it is not accurate, strictly speaking. He had believed that Canadian common law provided a reasonable restriction. However, *as you have been informed*, the G20 security plan is the creation of the Integrated Security Unit of which [Toronto Police Service] is one participant. After internal discussions and discussions involving lawyers from different levels of government, it was determined that an articulation of the basis for restricting access under this [A]ct was preferable to depending on the common law as it would provide greater legal clarity. It fell on Chief Blair to carry the request to the province.¹¹⁹

Ms. Cohen was the first to respond to the Chair's e-mail:

While we were not, as a Board, informed of this happening in the legislature, which could have occurred in either the confidential or public meeting, would it be appropriate to have a discussion so that we can ask our questions and gain a better understanding of the process, the players and the potential outcomes.¹²⁰

Mr. Grange also stated that the Chief had not properly advised the Board of the *PWPA* request. In response to these concerns, Chair Mukherjee reminded the Board that the Chief had informed the Board of the powers that had been sought under the *PWPA* at the May 20th confidential Board meeting:

¹¹⁷ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 84.

¹¹⁸ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 86-87.

¹¹⁹ E-mail from Chair Alok Mukherjee to the Board members (25 June 2010) [emphasis added].

¹²⁰ E-mail from Judi Cohen to Chair Alok Mukherjee (copy to the Board and Board Staff) (25 June 2010).

I have been thinking about Hamlin's remark last night that as a matter of "common courtesy" the Chief could/should have told the Board about the regulation under Protection of Public Works Act.

I had a nagging feeling that he had done so, but was not totally certain if he had only told me or the whole Board. If it was the former, then I would have been the one who failed to share the information.

*Now I have it from three separate sources that the Chief had informed the Board prior to June 2 that powers were being sought under this [A]ct. Notes from that confidential Board meeting will show this [emphasis added].*¹²¹

The May 20th Board meeting and this e-mail exchange between Board members represents the totality of the information that was made available to the Board concerning the *PWPA* request and the effect of the regulation that was ultimately passed by the Provincial Cabinet.

In response to Terms of Reference 3(ii), 3(iii), and 7, I will provide a more detailed analysis concerning the *PWPA* request, the regulation, and how its effect was communicated to the public. These matters will be discussed in *Chapter 10 – The Public Works Protection Act and Ontario Regulation 233/10*.

b. Questions asked or information requested by the Board

The Foreign Missions and International Organizations Act

The Board did not ask any questions or seek any information concerning the province's request for an arrangement under the *FMIOA* because it was never made aware of the request or the ability to seek such an arrangement.

The Public Works Protection Act

With respect to the *PWPA*, Chief Blair stated in his interview that the Board did "not [ask] a lot of questions" at the May 20th Board meeting regarding his update on the request for authority under the *PWPA*.¹²²

Although, the *PWPA* request had been communicated to the Board at the May 20th Board meeting, it is clear, based on Ms. Cohen's e-mail referred to above, that the Board was not entirely clear as to why the request was made or what implication it would have on the policing of the G20 Summit if it was granted. This may well have been an example where members of the Board struggled to identify what questions should be asked to elicit relevant information. Nevertheless, if questions remained unanswered or information was unclear, the Board should have persisted in its inquiries to Chief Blair and obtained the assistance of legal counsel so it could have understood the request that was being made of the provincial government.

¹²¹ E-mail from Chair Alok Mukherjee to the Board members (26 June 2010) [emphasis added].

¹²² Review's Interview with Chief William Blair (18 November 2011, Toronto) at 84.

c. Adequacy of the information provided or requested

The Foreign Missions and International Organizations Act

It is unfortunate that the Board did not have any information about the request for an arrangement under the *FMIOA*, particularly since an arrangement, if entered into, would have assisted in defining the Toronto Police Service's specific roles and responsibilities for policing at the G20 Summit. The Board is the entity responsible for the adequacy and effectiveness of the Toronto Police Service's policing in Toronto, which included policing at the G20 Summit. Any arrangement that defined the Toronto Police Service's responsibilities would, as a natural consequence, clarify the areas in which the Board's oversight responsibility was engaged. To the extent that there was a method available to the parties to clarify roles and responsibilities, it would have been proper to involve the Board in any discussions relating to a possible arrangement under the *FMIOA*.

It is, therefore, perplexing that an arrangement that aims to facilitate consultation and cooperation between the RCMP, OPP, and the Toronto Police Service for the policing of the G20 Summit was not discussed with either the Chief or the Board. While section 10.1(4) of the *FMIOA* contemplates an arrangement between the federal and provincial governments, that arrangement can delineate policing responsibilities of local police services, such as the Toronto Police Service. Given the availability of this mechanism and its potential impact on the legal structure for the policing of the G20 Summit, the provincial and federal governments should have engaged the Board in a discussion about an agreement under the *FMIOA*. Instead, the Board was left out of these discussions and was never aware that an arrangement under the *FMIOA* was being explored.

The Public Works Protection Act

According to the minutes for the May 20th Board meeting, the Board was told that the *PWPA* request was made because the Toronto Police Service wanted to ensure that it had sufficient power to protect certain designated zones from acts of violence. The protection of the public and crime prevention are law enforcement responsibilities that the Toronto Police Service must fulfill. The Board is responsible for ensuring those responsibilities are adequately and effectively carried out. The request under the *PWPA* was made because, in the Toronto Police Service's view, it required additional statutory authority to adequately and effectively prevent crime and protect the public. It was inappropriate for the Chief to make a request for these powers absent an upfront, full, and frank discussion with the Board about the basis for the request. The Board should also have been provided with the opportunity to seek legal advice of its own concerning the effect of a regulation being passed under the *PWPA*. Without this information, there was simply no way for the Board to analyze how a regulation under the *PWPA* would impact on the Toronto Police Service's policing of the G20 Summit.

In *Chapter 10 – The Public Works Protection Act and Ontario Regulation 233/10*, I will return to the subject of the request made under the *PWPA* and, in particular, provide my views on the propriety of the Chief, and not the Board, making a request of the provincial government for a change to legislation.

vi. The Secondment of Other Police Services

a. Information provided to the Board

As I have stated earlier in this chapter, the Toronto Police Service recognized during its planning for the G20 Summit that it would require the assistance of other police services to ensure adequate levels of safety and security for the event. The Toronto Police Service advised the Board that the out-of-Ontario officers that would be required to assist would need to be made special constables to enable them to enforce Ontario statutes during the event. At the June 11, 2010 special public meeting of the Board, Chief Blair estimated that there would be approximately 1,600 external police officers (from both Ontario police services and out-of-Ontario police services) assisting the Toronto Police Service to execute its G20 Summit policing responsibilities.

The Board was also provided with some information regarding the actual process for seconding the assistance of the various police forces. At the February 18, 2010 closed meeting of the Board, Chief Blair and legal counsel to the Board discussed entering into Memoranda of Understanding or Memoranda of Agreement (“MOU”) with other police services. At that meeting, legal counsel advised the Board that the City of Toronto had been asked to prepare the MOUs. The minutes show that, at that time, it was “unclear whether or not the Board [would] be involved in executing the MOU’s.”¹²³ There was no discussion about whether the Board would be involved in the negotiation and preparation of these MOUs. Legal counsel provided his view that the Board should be involved in this process while the Chief took the position that the City of Toronto should decide what role, if any, the Board should play in the negotiation of the MOUs.

At the Board’s next meeting on March 8, 2010, Chief Blair reiterated that various agreements may need to be executed to obtain, among other things, the assistance of other parties to provide policing for the G20 Summit. Following this, no further information concerning the legal arrangements between the Board and other police services was provided to the Board, until, on May 20, 2010, the Chief advised the Board that the MOUs with the other police services had been finalized. Chair Mukherjee confirmed in his interview that the information provided to the Board about these MOUs was limited:

There was never any discussion at the Board table about these MOUs or agreements other than the fact generally that the Service will need to enter into an agreement for bringing in additional police resources and receive explicit approval by the Board, and that the Chair will sign those agreements. There was never a substantive discussion of what will go into the memoranda.¹²⁴

In the end, the Board signed 28 MOUs with other police services and/or police services boards, including the OPP and the RCMP. Each of these MOUs were executed by the Chair but the Board was not involved in developing their content. In fact, the other Board members never saw the MOUs at any point in time prior to the G20 Summit.

¹²³ Toronto Police Services Board Minutes (18 February 2010) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meeting - Impact on the Toronto Police Service.”

¹²⁴ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 68.

b. Questions asked or information requested by the Board

The record shows that, with one exception, the Board did not ask any questions concerning the arrangements with or deployment of external officers to assist the Toronto Police Service during the G20 Summit, including questions concerning the MOUs that the Board would be required to enter into to facilitate these arrangements.

The one exception arose in the context of inquiries made regarding the out-of-Ontario officers' adherence to Ontario policing standards. In May 2010, Chair Mukherjee made inquiries with the Executive Director of the Board as to what standards would apply to RCMP officers deployed during the G20 Summit and whether they would be required to follow Ontario's regulatory requirements for Conducted Energy Weapons (i.e. TASERS) as prescribed by the *Equipment and Use of Force Regulation*, R.R.O. 1990, Reg. 926 made under the *Police Services Act* ("CEW Regulation"). When the Chair was advised by Inspector Stuart Eley, Executive Officer to Chief Blair, that the RCMP would not be subject to the CEW Regulation, he raised concerns with the Board's Executive Director and asked whether a legal opinion should be sought:

That may be ok if they [the RCMP] are deployed only to guard the inner parameters, but not if they – having been appointed by [Toronto Police Services Board] – are deployed in other parts of the city. As [Toronto Police Services Board] appointees they should be following the rules that apply here and not when they do federal or contract policing elsewhere.

Should we ask [the Board's legal counsel] to look into this and advise us for discussion at the Board meeting?¹²⁵

The following day, Chair Mukherjee e-mailed Deputy Chief Warr and asked whether the RCMP deployment would "be confined to a specific area or will they be deployed generally as part of public order maintenance."¹²⁶ In response, Deputy Chief Warr simply confirmed that the RCMP would be "covered by Federal legislation and not by the Provincial legislation."¹²⁷ There is no further communication in the record between the Deputy Chief and the Chair on this issue.

In his interview, Chair Mukherjee recalled raising this issue in response to the previous Board discussion on special constable appointments and media reports expressing concern about the conduct of RCMP officers and the adequacy of their training, especially with use of force weapons, such as TASERS. According to the Chair, he "wanted to make sure that they [the RCMP] were subject to our [the Toronto Police Service] rules."¹²⁸ Chair Mukherjee stated in his interview that while he questioned whether the Board should seek legal advice on this issue, he does not believe that this avenue was pursued. We have confirmed that no legal opinion on this issue was provided to the Board. Moreover, despite his concerns about how the differences in training and police practices among the various external police officers might manifest during the

¹²⁵ E-mail from Chair Alok Mukherjee to Board Staff (26 May 2010).

¹²⁶ E-mail from Chair Alok Mukherjee to Toronto Police Service (27 May 2010).

¹²⁷ E-mail from the Toronto Police Service to Chair Alok Mukherjee (27 May 2010)

¹²⁸ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 85.

G20 Summit, the Chair advised in his interview that he did not raise these concerns with the Board.¹²⁹

c. Adequacy of the information provided or requested

The Secondment of External Police Services

All of the information the Board received regarding the assistance of external police services was presented as a ‘done deal.’ The Toronto Police Service did not consult with the Board before making the decision to retain officers from other services, nor did it seek the Board’s input concerning adequacy and effectiveness issues that related to the delivery of police services in Toronto by non-Toronto Police Service officers. For example, there was never a discussion with the Board about what training these seconded officers would be provided to ensure they were familiar with applicable Board policies and Toronto Police Service procedures. The Board, for the most part, gave no indication that it had considered or was concerned about what oversight role, if any, it would have with respect to these external officers and, in particular, the RCMP and out-of-Ontario officers who would be granted special constable status.

The information the Board received or requested concerning the assignment of officers from external police services to assist the Toronto Police Service during the G20 Summit was insufficient. The recruitment, training, and deployment of officers from almost thirty police services to assist the Toronto Police Service is not a common occurrence. There are many important issues that the Board should consider when this type of cooperation is necessary, including:

- What policies and procedures will apply to these external officers, and if Board policies? And Toronto Police Service procedures are to apply, how will the external officers become adequately familiar with them in advance of the G20 Summit?
- What information would be provided to out-of-Ontario officers to ensure they were familiar with the *Police Services Act* and other provincial statutes they would be required to apply and abide by during the G20 Summit?
- What training would the officers receive?
- What type of oversight will apply to these external officers?
- Who will have operational control over these officers?

There is no explanation as to why the Board did not raise the above issues and concerns with Chief Blair in April 2010, when it was first advised that the Toronto Police Service would be seeking the assistance of other police services across Canada. While it was essential that the Toronto Police Service have the assistance of external police services during the G20 Summit, this does not mean that the Board should not have asked questions that would have helped it determine

¹²⁹ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 85 and 89.

whether the arrangement would include important safeguards that related to the quality and consistency of policing provided during the event. The Board required and should have demanded much more information.

The Arrangement with the Seconded Police Services

It was unfortunate that the Board did not play a role in the development of the MOUs that would ultimately govern the legal relationship between the external police services and the Board. The Board should have involved itself in developing or providing its input in respect of these MOUs, particularly in light of the fact that Chief Blair had advised the Board at the June 11th meeting that external police officers would be required to abide by the Board's policies in carrying out policing duties during the G20 Summit.

The Board was a party to every MOU. The provisions within these MOUs set out the relationship between the external police services and the Board. They also specified how the external officers assisting the Toronto Police Service would be regulated in their law enforcement functions during the Summit.¹³⁰ All of this was at the core of the Board's responsibility to ensure adequate and effective police services. In my view, as a contracting party, these arrangements should have been evaluated by the Board and the Board should have been provided an opportunity to obtain legal advice with respect to them. I will now provide a brief overview of some of the provisions of the MOUs followed by an analysis of some of the issues raised by these provisions and their impact on the Board's roles and responsibilities during the G20 Summit.

MOU with the municipal and provincial external officers

The "Deployment" section of the MOUs states that the seconded police service "will be subject to the authority and command of the Chief of Police of the Toronto Police Service or his delegate," "shall be subject to the code of conduct...applicable to police officers in the Province of Ontario," and "shall be subject to the Ontario Police Services Act and [Toronto Police Service] policy and operational guidelines, *wherever they do not conflict with legislation and procedures governing the deployed personnel.*"¹³¹ Chief Blair advised the Review that this conflict exception was "intended to assist in the integration of the various police services" and to ensure "interoperability and operational awareness during the Summit." According to the Chief these differences were identified and discussed prior to the Summit.

As a practical matter, once differences were identified, the integration of the differences between various police services was included in the pre-planning for the Summit. To ensure interoperability, a POU [Public Order Unit] Commander's briefing was conducted prior to the Summit which reviewed the POU and other plans and the differences were discussed. The three major areas of difference were: different use of force continuums, less lethal options, in the case of the RCMP and out of province forces, the fact that they

¹³⁰ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 4.2 and 4.3.

¹³¹ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 4.3 [emphasis added].

were not governed by the Special Investigations Unit...There was a focus on operational awareness to ensure the teams were aware of the differences as different teams could be working side by side at any time and must be aware of each other's procedures.¹³²

The MOUs also identify the various responsibilities of the seconded police services which include, an obligation to ensure officers are equipped with uniforms and equipment that are standard issue for police officers in Ontario and successfully complete, prior to their deployment, the requisite certification or training.¹³³ In terms of liability, the MOUs provide that the Toronto Police Service shall not be considered the employer of the seconded officers and that any public complaints or disciplinary matters involving the seconded officers will be processed pursuant to the legislation applicable in their home jurisdiction by their own municipal police services board.¹³⁴ However, all costs associated with legal proceedings incurred by a seconded police officer arising from duties associated with the G20 Summit shall be borne by the Toronto Police Service, unless the costs arise from negligent, wilful misconduct or criminal conduct.¹³⁵

The MOU entered into between the OPP and the Toronto Police Service included one important distinction from the other agreements entered into between the Toronto Police Service and other police forces. In the event of a conflict between the OPP's and the Toronto Police Service's policies and procedures, the conflict would be referred to the Toronto Police Service Chief of Police and the Commissioner for the OPP for resolution.¹³⁶ While the MOU does not establish a mechanism for precisely how this conflict would be resolved, at least some thought was given to identifying and resolving in advance of the G20 Summit the potential conflicts and inconsistencies in provincial and municipal police policies and procedures.

MOU with the federal police service

The RCMP and the Board also entered into a MOU relating to the deployment of RCMP officers for the purposes of assisting the Toronto Police Service with the provision of specific security for the G20 Summit ("RCMP MOU"). The RCMP MOU only outlines the roles and responsibilities concerning these arrangements for a period prior to the Summit, from June 20 to June 23, 2010. We understand that the RCMP were deployed in Toronto on those pre-event days to familiarize themselves with the geography of Toronto prior to the start of the Summit.

¹³² Toronto Police Service Answers to Undertakings, Nos. 22 and 23 (21 February 2012).

¹³³ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 3.8, 4.5 and 4.10.

¹³⁴ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 4.7.

¹³⁵ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 10.8.

¹³⁶ Memorandum of Agreement for Deployment of Police Officers to the City of Toronto for the Purpose of the G20 Summit between Toronto Police Services Board and Her Majesty the Queen in Right of Ontario as Represented by the Minister of Community Safety and Correctional Services operating as the Ontario Provincial Police (executed by Chair Alok Mukherjee) on (3 August 2010) at 4.3 and 15.

There is actually no MOU between the RCMP and the Board for the days of the Summit itself, despite the fact that the RCMP were deployed in the Interdiction Zone and Outer Zone during these days as discussed in *Chapter 5 – Command and Control*. Under section 5.1 of the RCMP MOU, the RCMP were also subject to the *Police Services Act* and Toronto Police Service policy and operational guidelines, wherever those policies or guidelines did not conflict with legislation and RCMP procedures otherwise governing the deployed personnel. However, unlike every other MOU entered into between the Board and external police or security forces, there is no provision that stated that the RCMP would be under the operational command of the Toronto Police Service.¹³⁷

A proper consideration of these MOUs should have led the Board to assess two very significant provisions: (a) the requirement that external officers would follow Board policy and Toronto Police Service procedures, unless they conflicted with the external officers' home policy or procedure; and (b) the requirement that the external officers would face discipline in their home jurisdiction relating to their deployment during the G20 Summit.

These provisions raise two objections. First, the Board should never have accepted that the 'home' policy or procedure trumped an inconsistent Board policy or Toronto Police Service procedure. The MOUs explicitly state that the external officers were (with the exception of the RCMP) under the operational control of Chief Blair or his designate during the event. To ensure that consistent policies and procedures were being applied by all officers under the command of the Toronto Police Service, any conflict should have been resolved in favour of the applicable Board policy or Toronto Police Service procedure. On the basis of the provision in the MOU, a situation could have arisen where officers from each of the 28 external police services were applying different from or inconsistent with policies and procedures from their own 'home' jurisdictions during the G20 Summit, on issues as fundamental as prisoner care and control or public order policing. Accordingly, the inclusion of these provisions in the MOU unnecessarily opened the door to confusion and inconsistency in the policing of the event.

Second, there is a gap in the MOU provision dealing with the discipline of external officers. The MOUs provide that the 'home' board will be responsible for all disciplinary issues. However, if the disciplinary issue relates to a Board policy that conflicts with the 'home' policy, the 'home' board would not take any steps to address the conduct. Take the example of a complaint that the conduct of an external officer seconded to assist with the G20 Summit violated the Board's policy on prisoner care and control. Assume the Board's policy on the subject was different or even inconsistent with the policy of the officer's 'home' jurisdiction. Under the MOU, it would be permissible for the complaint not to be referred further, bringing an end to the disciplinary process. In my view, if the matter at issue was the subject of Board policy, it was obviously important that it be adhered to by all officers policing in the Outer Zone. The Board should not have agreed to a conflict equals no-discipline rule – the effect of which is that the officers policing the G20 Summit could act contrary to Board policy without consequence. These issues should have been examined closely by the Board before the MOUs were approved and executed. Rather,

¹³⁷ Memorandum of Agreement for Deployment of Police Officers to the City of Toronto for the Purpose of the G20 Summit between Toronto Police Services Board and The RCMP (executed by Chair Alok Mukherjee on 14 June 2010)

a review of the information relevant to this matter indicates that the Board allowed itself to become a rubber stamp to approve and sign agreements without consideration for the oversight issues they raised.

Recommendation No. 20: Board policies and Toronto Police Service procedures should apply to police personnel seconded to assist the Toronto Police Service in a joint operation

Board policy and Toronto Police Service procedures should apply to external police officers seconded to assist in policing the city of Toronto where those officers are under the command and control of the Toronto Police Service. The home police services boards should be required to formally adopt the relevant Board policies and Toronto Police Service procedures as their own. In that regard, the Board should provide its policies and the Toronto Police Service procedures to the home police services board so that it can help ensure that its officers are familiar with these policies and procedures. If external police officers violate Board policies or Toronto Police Service procedures while carrying out their duties in assisting the Toronto Police Service, the home board or their complaints and disciplinary oversight body, should have the authority to discipline those officers, thereby avoiding any jurisdictional dispute between the Board and the home boards.

vii. Training

a. Information provided to the Board

As discussed above, the Board knew as early as March 2010 that the Toronto Police Service would be seeking the assistance of other police services across Canada. Chair Mukerjee knew, or should have known, based on the provisions of the MOUs he executed, that these officers were required to adhere to the *Police Services Act*, as well as Toronto Police Service policy and operational guidelines.¹³⁸ However, the Board never received any information about the scope of training these officers (particularly the out-of-Ontario officers) would receive to ensure that they were knowledgeable, familiar and comfortable with the statutory powers, Board policies or Toronto Police Service procedures that would apply during their deployment in Toronto for the G20 Summit. At no point in time was the Board advised that a training curriculum and program, including detailed presentations, had been developed for the purpose of ensuring that external officers were familiar with these procedures and policies as well as the legal requirements for arrest and detention of prisoners in Ontario. I deal with the type, content, and method of training provided to Toronto Police Service officers and external police officers in *Chapter 7 – Training of Police for the G20 Summit*.

¹³⁸ See for example the Memorandum of Agreement between the Toronto Police Services Board and The Regional Municipality of Durham Police Services Board (made June 17, 2010) at 4.3.

In addition, while Board members were advised at the June 11, 2010 Board meeting that Toronto Police Service officers had “received extensive training on the safe use of the LRAD,” they were never provided with, nor did they seek to obtain, the details of this training.¹³⁹ I deal with the LRAD issue more specifically below, under the heading “Infrastructure and Equipment.” While the record indicates that a number of training aids were developed to instruct Toronto Police Service and other officers with respect to their policing duties during the G20 Summit, the Board never saw any of this material. In fact, the Board did not receive any information on even the general topics of, or methods to deliver, the training. As it turned out, the training content covered various policing matters, some of which were the subject of existing Board policies, such as: a police officer’s obligations under the *Charter of Rights and Freedoms* and under the *Criminal Code*, demanding identification from individuals, the power to search or arrest individuals without a warrant, and the use of force on individuals participating in a demonstration.

b. Questions asked or information requested by the Board

The Board did not ask any questions or seek further information from Chief Blair or the Toronto Police Service regarding the training of Toronto Police Service officers or external officers seconded to assist the Toronto Police Service with the G20 Summit. For example, it did not ask to receive or be briefed on the training materials, their scope, content, or even the structure of the training program that had been developed for officers deployed to police the G20 Summit.

c. Adequacy of the information provided or requested

The policies applicable to a police officer differ from service to service. It may be that particular Board policies, such as policies in relation to crowd control and perimeter control and containment, which are applicable to the Toronto Police Service, do not exist in respect of another police service. Therefore, as discussed above under the section titled “Secondment of Other Police Services,” the Board should have turned its mind to whether the external police officers would be required to adhere to the Board’s policies during the G20 Summit or whether the conflict exception under the relevant MOU (as described earlier) would apply. If Board policies were applicable to external officers, the Board should have obtained sufficient detail to satisfy itself that adequate training would be provided to ensure that these external officers were familiar with the Board policies and related Toronto Police Service procedures.

In my view, the Board should not have been satisfied with simple assertions by the Toronto Police Service that Board policies and Toronto Police Service procedures would apply during the G20 Summit. Instead, the Board should have probed further and obtained specific information about the training that would be provided and in what ways it would address Board policies and Toronto Police Service procedures. In other words, the Board should have done its own due diligence to independently satisfy itself that steps were being taken to maximize adherence to, and familiarity with, a consistent set of policies and procedures as between thousands of police officers from different police services. Some of the questions that the Board should have asked include:

¹³⁹ Toronto Police Services Board Minutes (11 June 2010) (Special Open Meeting), Item #P161, “G20 Summit – Preparations and Equipment Acquisition.”

- What type and form of training was being provided to the officers?
- How many officers would be required to undergo training?
- How much time would officers be required to devote to the training?
- What topics would be covered in the training?
- How far in advance of the G20 Summit would the officers undergo this training?
- How would the results of the training be measured?
- Would the RCMP and OPP undergo any form of training and if so, would the content of that training be similar to the training delivered to other police forces?

The Board never asked any of these questions and, without the answers, were not in a position to discharge its responsibility to ensure adequate and effective policing by the external officers.

For instance, some of the training material produced by the Toronto Police College for the G20 Summit dealt with what methods police officers should use during the event to properly contain a violent crowd. The Board did not know of the existence of these materials and certainly did not conduct an analysis of whether they were consistent with the principles outlined in its existing policy on containment.

The Board also seemed content to rely on Chief Blair's report that Toronto Police Service officers had been properly trained in the use of the LRAD without knowing anything of substance concerning the training, including the form of training that would be provided, what type of training would be given (i.e. computer or face-to-face training), how many officers would ultimately receive this training, whether the training was mandatory for all Toronto Police Service officers, whether the use of the LRAD would be confined to Toronto Police Service officers, and who would be responsible for monitoring compliance with the use of this equipment. The Board's lack of knowledge about LRAD training extended to all other training as it did not have any information about what other training topics would be covered and delivered to the Toronto Police Service officers.

Of course, it was not the role of the Board to 'approve' operational directions or instructions being provided to Toronto Police Service or other officers with respect to carrying out their policing duties during the G20 Summit. However, the Board did have a role to play in reviewing these directions and instructions to ensure that they accorded with Board policies and to identify any topics or areas that may, due to the nature of the G20 event, require the creation of a new Board policy.

It was critical for the Board to have more information about the training that was to be provided to officers who would be policing the Interdiction Zone and Outer Zone. Without this information the Board could not be confident that the tactics and procedures employed during the G20 Summit would accord with applicable policies and procedures, nor could it be confident that these officers would deliver a consistent type of policing during the G20 Summit.

Recommendation No. 21: The Board should receive information on any training developed by the Toronto Police Service for a major event

The Board should receive information related to the training of Toronto Police Service officers and other external officers seconded to assist the Toronto Police Service with policing a major event. The information the Board receives should permit it to determine whether the training accords with the Board's existing policies and give the Board an opportunity to identify any gaps in its policies that need to be addressed prior to the event. Such information should include, but is not limited to, any material developed to aid in the training, details concerning how the Toronto Police Service plans on monitoring compliance with the training and details concerning who is required to undergo the training and what form of training is being provided to the officers.

viii. Human Resources

a. Information provided to the Board

Unlike some of the other topics discussed above, the Board received a substantial amount of information from the Toronto Police Service, usually during Board meetings, on various human resource-related issues such as: staffing requirements, appointments, incremental salary costs, shift schedules, officer discipline, uniforms, and protective clothing. It is not surprising that there was a free flow of this information in the lead up to the G20 Summit. Not only did the Chief confirm that this was the type of information within the purview of the Board's jurisdiction under the *Police Services Act* but it was one of the three standing items that the Chair directed the Chief to brief the Board on a monthly basis.

However, one important human resource issue on which the Board received very little information was whether in addition to providing policing services in and around the areas affected by the G20 Summit, the Toronto Police Service would be able to maintain continuity of services in the city of Toronto as a whole. Continuity of service in this context means an obligation to provide quality police services in a continuous manner throughout changing circumstances. This obligation arises from the Board's statutory authority to provide adequate and effective police services in the city of Toronto through the development of policies and the establishment of objectives and priorities for the police force.

The only information the Board received on this issue was at the June 11, 2010 closed Board meeting. At that meeting, Chief Blair told the Board that the Toronto Police Service would maintain "regular services throughout" the city of Toronto while playing a "significant lead role in providing policing and public security services to all participants" during the G20 Summit.¹⁴⁰ The Chief later confirmed at the June 11, 2010 special open Board meeting that it was the Toronto Police Service's "intention to ensure business continuity during the G20 Summit and that all core

¹⁴⁰ Toronto Police Services Board Minutes (11 June 2010) (Special Closed Meeting), Item #C184, "Senior Officers' Organization – Temporary Compensation Accord for G8/G20 Summit."

services related to primary response will continue in the usual manner.”¹⁴¹ The Chief did not provide any details or information as to how continuity of service would be achieved. Finally, the Board was advised at the June 11th open meeting of the number of internal deployments, uniformed members, civilian members and external deployments that the Toronto Police Service had determined was required to assist it in providing police services during the G20 Summit.

b. Questions asked or information requested by the Board

According to the minutes and our interviews, the Board asked very few, if any, questions about the human resource issues that were raised and discussed at several Board meetings. It also did not raise any concerns with respect to the number of officers that the Toronto Police Service had determined were required for policing the event despite the fact that it had not engaged in its own analysis of whether the number was consistent with discharging its mandate to provide adequate and effective police services throughout the entire city.

c. Adequacy of the information provided or requested

The Board received a considerable amount of information and detail and was consistently kept apprised of various ongoing human resource issues, primarily as a result of its direct request for such information from Chief Blair. Because most of this information did not relate to the area of operations, the Chief did not express any concerns to the Board about providing it with these details. The Board, in its usual day-to-day business, must address and deal with these same issues, for example, through the negotiation of collective agreements and in its role as the employer of the police force.

It is my opinion, however, that the Board may not have received enough human resources information to address appropriately and handle the various public safety issues that arose in the context of an event like the G20. For instance, the Board was not consulted about the Toronto Police Service’s plans for ensuring effective continuity of police services during the G20 Summit, or the number of officers that would be required to effectively police both the Summit and rest of the city. I note that there is no evidence in the record of specific complaints or problems concerning the continuity of police services during the G20 Summit. Nevertheless, as the body statutorily required to ensure that there is an adequate supply of police officers to maintain safety, investigate crime and protect the community, the Board had a duty to be far more engaged in this issue. The Board should have asked questions and collected information to satisfy itself that there would be sufficient human resources available to ensure business continuity across the city and not simply wait until a few short weeks before the G20 Summit to be told that continuity of service would be achieved. Some of the questions the Board should have addressed with Chief Blair are:

- How many police officers will be assigned to protecting the area around the G20 Summit?

¹⁴¹ Toronto Police Services Board Minutes (11 June 2010) (Special Open Meeting), Item #P161, “G20 Summit – Preparation and Equipment Acquisition.”

- How many police officers will be assigned to police the rest of the city?
- What analysis did the Toronto Police Service engage in to determine whether the number of police officers assigned to protecting the area around the G20 Summit was adequate to maintain continuity of service?

These are just a few questions that the Board should have considered early on in the development of the G20 planning process. At the very least, the Board should have posed these questions to Chief Blair at the June 11, 2010 Board meeting when the Chief advised that the Toronto Police Service would maintain continuity of its regular policing operations. Based on the record, the Board did not ask these questions nor did it seek further information from the Chief in respect of this issue. For these reasons, I conclude that the Board did not have all the information it required to effectively carry out its legislative responsibilities.

Recommendation No. 22: The Board should review the Toronto Police Service's continuity of service plans for major policing events

Where there is a large event that may impact upon the Toronto Police Service's ability to deliver regular police officers in Toronto, the Board should consult with the chief of police concerning how continuity of service can be achieved. The Board should be provided with any plans developed by the Toronto Police Service to aid in the consultation.

ix. Infrastructure and Equipment

a. Information provided to the Board

Infrastructure Requirements for the G20 Summit

Early on in the planning for the G20 Summit, Chief Blair advised the Board on deficiencies in the Toronto Police Service's existing infrastructure and what steps would be required to correct these in advance of the event. For example, the Board was advised that the Toronto Police Service's current radio infrastructure was at capacity and that the anticipated additional traffic load during the G8 and G20 Summits could damage the system and cause delays in voice communications, which could create potentially serious operational and safety risks to police/emergency services personnel and the public. The Board was further advised of the Toronto Police Service's CCTV infrastructure plan to provide the Toronto Police Service MICC with live video images of ongoing activities, possible protests, and intrusion detection.

The Board was also advised at the closed meeting of the Board on January 21, 2010 that a number of facilities would be required for the G20 Summit, including a prisoner processing centre, because the Toronto Police Service's existing infrastructure was inadequate for the number of expected arrested persons and, as a result, would not satisfy the legal requirements for processing

prisoners in a timely manner.¹⁴² No further information was provided about the PPC to the Board during formal exchanges with Chief Blair, including its proposed location. While there was an entire 185 page chapter devoted to a discussion about the PPC in the Toronto Police Service's Operational Plans, the Board, as noted above, never saw this chapter. It was also not briefed on any part of the PPC plan and, therefore, did not have any information about the Toronto Police Service's design plans for the facility or any sense of how the facility would operate during the G20 Summit. In summary, the Board received very limited information about the PPC. A further analysis of the issues and questions related to the design and operation of the PPC will be discussed in *Chapter 11 – The Prisoner Processing Centre*.

b. Procurement of Equipment for the G20 Summit

In terms of equipment, Chief Blair informed the Board on the need to ensure that Toronto Police Service officers had sufficient protective clothing and equipment during the G20 Summit, such as helmets and gas masks, given the crowd behaviour and tactics known to have been used at similar previous events of this nature. This issue was first raised early on at the January 21, 2010 closed Board meeting in order to ensure the Toronto Police Service had sufficient time to obtain and test the equipment and properly fit its officers. The Board was also advised that the Toronto Police Service would be acquiring approximately 2,500 radios for the duration of the G20 Summit in order to adhere to provincial adequacy standards and to ensure officer safety. The Chief engaged the Board in a lengthy discussion about the Toronto Police Service's procurement procedures and the need to expeditiously acquire goods and services for the event's security.¹⁴³

The only other discussion the Board and Chief Blair had regarding the type of equipment to be used during the G20 Summit was in respect of the Toronto Police Service's decision to acquire the LRAD. This discussion was initiated by the Board at a special closed meeting on June 4, 2010, in response to letters that Chair Mukherjee had received from the public expressing concern about the possible use of the LRAD and, as well, a report prepared by Ms. Cohen regarding equipment acquisition and the use of the LRAD as a crowd control mechanism during the G20 Summit (more detail concerning the report will be provided below). Specifically, Ms. Cohen was concerned about how this device would be used in the absence of a specific Board policy or Toronto Police Service procedure, whether this device could be used as a weapon and, if so, what safeguards would be put in place to protect the public and police officers, and what kind of training police officers would receive in respect of the proper operation of this device. It is of note that this was the first report submitted by a Board member concerning any matter related to the G20 Summit and, in fact, was the only Board member report submitted for consideration in the entire lead up to the G20 Summit.

Following a discussion during the June 4th meeting on the security preparations for the G20 Summit, the Board scheduled a special public meeting on June 11th to discuss the LRAD. During

¹⁴² Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting - Impact on the Toronto Police Service."

¹⁴³ Toronto Police Services Board Minutes (21 January 2010) (Closed Meeting), Item #C6, "2010 G8 and G20 Summit Meeting - Impact on the Toronto Police Service;" Review's Interview with Chief William Blair (15 November 2011, Toronto) at 65.

the special public meeting, Chief Blair advised the Board that the LRAD would only be used as a communication device to warn protestors and only if a demonstration escalated to a potentially violent situation. As discussed earlier, the Board was also advised that Toronto Police Service members had received extensive training on the safe use of the LRAD and that only the Toronto Police Service G20 Incident Commander had decision-making authority on when to deploy the LRAD. At the end of the meeting, several motions were put forward. Although the motions put forward to accept the recommendations set out in Ms. Cohen's report were all approved, a motion requiring Chief Blair to provide a report to the Board on a policy with respect to the LRAD and its deployment was withdrawn following a discussion amongst the Board and the Toronto Police Service. According to Ms. Cohen, this motion was withdrawn because of the pending litigation seeking an injunction respecting the use of the LRAD brought by the Canadian Civil Liberties Association.¹⁴⁴

c. Questions asked or information requested by the Board

Most of the questions asked related to the use of the LRAD were raised in an e-mail from Ms. Cohen to the Executive Director of the Board on May 28, 2010. This was after the Board became aware of the potential use of the LRAD through media reports and after it learned that the Chief's office did not consider the LRAD a weapon such that the *Equipment and Use of Force Regulation* would apply:

I would like this [the LRAD] raised at the Board. What is t[h]e criteria for determining a specific device is a weapon or use of force? What is the process for introducing the LRAD device in routine policing?¹⁴⁵

Mr. Grange responded to the concerns and questions raised by Ms. Cohen stating that he "too would appreciate some clarification on this matter" and asked whether "other 'equipment'...has been purchased under the G8/G20 project that we [the Board] need...to be informed about?"¹⁴⁶ Mr. Grange also queried how the LRAD, which had been classified by Chief Blair as a "non-weapon" and not subject to the use of force requirements, would "fit into the overall governance model" of the Board – which I have interpreted to mean whether the Board had any role to play in the development of policies and standards for the use of this device.¹⁴⁷

In response, Chair Mukherjee reminded Mr. Grange of what he viewed to be the proper role of the Board when it comes to asking questions of Chief Blair and explained some of the issues that the Chief was facing with respect to keeping open lines of communication with the Board (which issues will be further explored in the next section):

¹⁴⁴ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 113. The injunction to restrain the use of the LRAD was heard by Justice D.M. Brown of the Ontario Superior Court of Justice on (23 June 2010) a few days before the G20 Summit weekend. See: *CCLA v. Toronto Police Service*, 2010 ONSC 3525 (S.C.J.).

¹⁴⁵ E-mail from Judi Cohen to Board Staff (copy to Board Staff and the Board) (28 May 2010).

¹⁴⁶ E-mail from Hamlin Grange to Judi Cohen (copy to Board Staff and the Board) (28 May 2010).

¹⁴⁷ E-mail from Hamlin Grange to Chair Alok Mukherjee (28 May 2010).

Our responsibility as a board is not to badger the Chief, be suspicious of him or have our noses out of joint because of a news report about something we didn't know about, but to do our part in making sure the city is safe, and no untoward event happens.

Would we rather have a bunch of people intent on anarchy discomfited by a dastardly whistle or have them hosed by painful water canons, tasered, tear gased or, worse shot at? All these have happened in other cities, as you know.

As to not knowing what is going on, you know, as I have said to you before, one of our own acted precipitously that almost cost the Chief his security clearance. I am aware that there has been pay back for calling him on it and I have paid more for it than he ever did.

Be that as it may, that action made the Chief extra cautious with the Board. All the same, at each of the last few Board meetings, G20 has been on the agenda, giving Board members ample opportunity to ask questions. Few took advantage.

It galls me when despite this, it is insinuated that I have been derelict in my duty for not arranging a proper briefing.

*Oversight places an onus to do the home work and be prepared, and not just react to newspaper reports, feigning anger and making allegations.*¹⁴⁸

Despite Chair Mukherjee's position respecting the Board not "badgering" Chief Blair regarding the procurement of the LRAD, the Chair convened a special confidential meeting on June 11, 2010 to give the Chief an opportunity to address the questions raised by Ms. Cohen in both her e-mail and report: (i) what are the criteria for determining a specific device is a weapon or use of force? (ii) what is the process for introducing an LRAD device in routine policing? and (iii) why had the Board not been briefed in advance on the LRAD and its acquisition by the Toronto Police Service?

Chair Mukherjee prepared his answers to these questions before the Board meeting. He discussed the provisions of the *Police Services Act* which confer, define, and constrain the Board's responsibilities (ss. 31(1) and (4)) and suggested that the issues concerning the LRAD did not fall within the Board's proper function:

There are two sections of the *PSA* [*Police Services Act*] that must be read together in deciding the board's powers vis-à-vis "routine policing."

...

It is clear that s. 31(4) constrains the board's responsibilities as set out in s. 31(1). Further as s. 41(1) of the *Act* dealing with duties of the chief makes quite clear, the *Act* makes a separation between the board's duty to govern and the chief's duty to manage.

...

¹⁴⁸ E-mail from Chair Alok Mukherjee to Hamlin Grange (28 May 2010) [emphasis added].

*These provisions of the Act establish the framework within which the board makes decisions regarding matters having to do with "routine policing." But those decisions must have to do with objectives, priorities and policies, not operations, and they have to take into account the regulations formulated by the province.*¹⁴⁹

Chair Mukherjee went on to state that, even though the G20 Summit had been a standard item in the Board's confidential agenda for the past several months, his "recollection is that few questions were asked by Board members and not one question was ever asked pertaining to risks, approaches or goals related to police deployment or to possibilities for disruption."¹⁵⁰

Before providing these responses to Ms. Cohen or to the Board members at the scheduled meeting on June 11th, Chair Mukherjee forwarded his answers to Chief Blair and asked that it be reviewed for accuracy.¹⁵¹ In the Chief's responding e-mail, he states that the Chair's answers are "quite accurate" and that he would be happy to brief the Board members on the function and purpose of the LRAD and the reason why the Toronto Police Service chose to acquire it for the purposes of the G20 Summit.¹⁵² The Chair's draft response was discussed during the various interviews with Board members. In her interview, Ms. Cohen expressed that she was "shocked" and believed that her questions to the Chair constituted an internal communication about Board matters that never should have been shared with the Chief.

My note to the Chair was not sent to the Chief, it was [an] internal communication, with the Board and the tone of his [the Chair's] response and the contents of what's here, should not have been sent to the Chief. And this reinforces the inability to ask a question, as a...Board member, who's not familiar with all of these issues. So when I go forward and I ask my questions and what happens is that I get a response that is insulting at best, ok, and says anyone that would have been paying attention to events knows all of this, is insulting...Since when does the Chair of a police board require the Chief's position, approval, to respond to a Board member, ok? Well, he should have been called to the floor and he should have been asked these very questions.¹⁵³

After receiving Chair Mukherjee's response, Ms. Cohen sent the Chair an e-mail setting out various issues and concerns she had with some of the comments he made about the Board's role and communications with the Chief. First, Ms. Cohen pointed out that, in her opinion, it was not the Chair's role to provide an answer to her questions, rather the answers should be provided by staff or the Chief. She went on to say that, "as a Board, fulfilling our mandate, we would then be able to accept that response, request more information or clarification, or directly question staff."¹⁵⁴ Ms. Cohen also provided the following general comments to the Chair:

Further you state, that "the security plan for the Toronto summit is being led by the [Toronto Police Service], but as part of an Integrated Security Unit consisting of the

¹⁴⁹ Chair Alok Mukherjee, Answers to Questions by Ms. Judi Cohen Re Use of LRAD Devices (June 2, 2010) [emphasis added].

¹⁵⁰ Chair Alok Mukherjee, Answers to Questions by Ms. Judi Cohen Re Use of LRAD Devices (2 June 2010).

¹⁵¹ E-mail from Chair Alok Mukherjee to Chief William Blair (2 June 2010).

¹⁵² E-mail from Chief William Blair to Chair Alok Mukherjee (3 June 2010).

¹⁵³ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 178-180.

¹⁵⁴ E-mail from Judi Cohen to Chair Alok Mukherjee (4 June 2010).

RCMP and other security agencies. This is where decisions are being made on matters concerning the G20.” *Are you suggesting that the [Toronto Police Services Board] has been relieved of its duties by virtue of this, and if so, I would like to know if you have been briefed on these matters to the exclusion of other Board members.*

In this regard I wish to confirm that *I did ask questions about risks and specifically about ongoing liabilities for the Board, as did others.* I am not sure what you are suggesting in your statement about responsibility being a two way street. My responsibility is under the PSA [Police Services Act] and I intend to discharge my responsibility under that Act, and I will continue to raise issues at any time that I deem appropriate to fulfill my duties under the Act.¹⁵⁵

Chair Mukherjee forwarded this response to Councillor McConnell stating only that “Judi wants to create a confrontation.”¹⁵⁶ In his interview, the Chair characterized the “annoyance or irritation” he perceived in Ms. Cohen’s communication as simply one of a “difference of opinion about what’s the right way for the Board to exercise effective governance.”¹⁵⁷ The concern with the Chair’s response is that these differences are fundamental – they go to the core question of what the Board’s proper legislative role is in exercising oversight in connection with the Toronto Police Service’s policing function.

d. Adequacy of the information provided or requested

It is clear from the record that Ms. Cohen worked hard to push the issue of the use of the LRAD. She attempted to obtain the information she thought the Board needed to assess – that is, whether appropriate safeguards were in place for the LRAD to be used in a manner that was consistent with legal principles and adequate and effective policing. I find it unfortunate that her efforts to obtain this information were resisted or at times criticized by Chair Mukherjee. As a result, there remained important questions that were left unanswered, including details concerning the training that was going to be provided in relation to the LRAD, whether a policy and procedure was required to ensure the safe operation of the LRAD, and whether the RCMP should be required to receive training on the use of the LRAD in the event that they would be required to, as they did, assist the Toronto Police Service in policing the Outer Zone. These were appropriate questions for the Board to concern itself with and it should have supported Ms. Cohen in her efforts to obtain these and other answers.

Based on the above facts, I conclude that despite best efforts on the part of Ms. Cohen to obtain relevant information to help the Board provide adequate governance by, for example, creating a specific policy to address the use of the LRAD, the requests for information were not supported, encouraged or fully and sufficiently addressed by the Board as a whole. Instead, Ms. Cohen was criticized for raising these issues and even accused of not being sufficiently engaged in the

¹⁵⁵ E-mail from Judi Cohen to Chair Alok Mukherjee (4 June 2010) [emphasis added].

¹⁵⁶ E-mail from Chair Alok Mukherjee to Councillor Pam McConnell (4 June 2010).

¹⁵⁷ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 127-128.

planning and policing aspects of the G20 Summit when she made requests for more information. Unfortunately, a fundamental misunderstanding on the part of some Board members, including Chair Mukherjee, of what role the Board could play or what information the Board was entitled to, undermined the Board's effective oversight of this important issue.

PART III ISSUES OR PROBLEMS FACED BY BOARD MEMBERS HAVING REGARD TO THEIR MULTIPLE ROLES AND RESPONSIBILITIES

A. THE BOARD'S STRUGGLE TO BALANCE ITS DUAL ROLES – BOARD MEMBER VERSUS CITY COUNCILLOR

I have been asked to review any issues or problems faced by Board members with respect to the information they received, or felt they ought to have received, having regard to the fact that some Board members fulfill multiple functions in the City of Toronto's governance structure. In particular, three seats of the Board's seven are assigned to members of Toronto City Council (two seats for city councillors and one seat for the Mayor or his/her delegate). I had the opportunity to interview three city councillors who also occupied a seat on the Board in the lead-up to and during the G20 Summit.

As discussed earlier in this chapter, some members of the Board had concerns with the differences in the information being delivered to the Board versus Toronto City Council regarding the G20 Summit, with the latter receiving details on matters that were at the core of the Board's function and yet had not been communicated to the Board. One example referred to by Chair Mukherjee related to the request by the Toronto Police Service for a financial commitment to procure certain equipment for the G20 Summit:

We [the Board] had not been party to any discussion and in late January I had a conversation with Mayor Miller and the City Manager, Joe Pennachetti, when I understood that the City was being asked to make a financial commitment for the purchase of certain equipment and there had been nothing that had gone through the Board...In fact, what we [the Board] found out was that the RCMP had communicated with the Toronto Police Service and Toronto Police Service had gone directly to the City asking for a commitment of several million dollars for the purchase of communications equipment.¹⁵⁸

Councillor McConnell also expressed concerns regarding the inconsistency of the information she would receive as a member of the Board and as a member of City Council, noting that there was G20-specific information that was not being shared with the Board but was being shared with City Council and even members of the public:

Well the first thing is that this comes out of this whole notion [that the Toronto Police Service] can't discuss it [the Prisoner Processing Centre], there's a lot of information but it can't be shared. The City is in charge of that...but then I turn up at a meeting of Council and at a meeting of Council there's a report for all councillors on where the

¹⁵⁸ Review's Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 93.

detention centre will be or at least the property that will be leased, how much it will be leased for and that would have been right about the, this time and I mean from my perspective we're only just leasing the property...

....and then finally it appeared as if one of our [Business Improvement Areas], the Waterfront [Business Improvement Area], had now been given [information about the location of the G20 Summit security fence]. We had been saying now where was, where will the fence be, right? Where will the perimeter [be]? 'Well, well that's very secret, we don't know where that perimeter will be. We certainly can't discuss it.'¹⁵⁹

Councillor McConnell recalled that her concerns were limited to having received information as a city councillor that she thought the Board should be aware of. She noted that information she received at a confidential Board meeting was “not necessarily information that I need[ed] for any other purpose...in my work as a councillor.”¹⁶⁰

B. THE COMPLAINT AGAINST COUNCILLOR VAUGHAN AND THE SHARING OF “CLASSIFIED” INFORMATION

Councillor Vaughan felt quite differently. In the lead-up to the G20 Summit, Councillor Vaughan sought information in response to certain questions that were being asked by his constituents (e.g. the location of the security fence). On February 11, 2010, Councillor Vaughan issued a newsletter to the residents of his ward. In it, he summarized information that he had learned regarding the plans for the G20 Summit. Councillor Vaughan stated as follows:

As your councillor I will continue to work to try and move the summit, and if it can't be moved, mitigate its impact. I will also use my seat on the Police Services Board to make sure the interests of the ward and the city are respected as security issues come forward.

I have received a 'classified' briefing so far. There will be serious disruptions. The security perimeter will be much larger than the area affected by the recent NFL games, and the protests are expected to be larger than last spring's Tamil demonstrations.¹⁶¹

Following its release, Chair Mukherjee sent Councillor Vaughan a memo identifying three broad concerns about the content of the newsletter. First, that Councillor Vaughan's reference to a “classified briefing” suggested that the newsletter itself contained information about matters discussed in a confidential Board meeting and divulging this information could constitute a breach of his Board member oath of secrecy. Second, that Councillor Vaughan's reference to “serious disruptions” and his disclosure of the potential magnitude of these disruptions would be taken as authoritative and that any “public questioning, discussion or reaction as a result...can seriously comprise operational decisions and public safety.” Third, that Councillor Vaughan's comment about using his seat on the Board amounts to a declaration that, in his capacity as a Board member, he will “seek to influence operational decisions” which, according to the Chair, is

¹⁵⁹ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 111-112.

¹⁶⁰ Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 127-128.

¹⁶¹ Letter from Councillor Adam Vaughan to Residents of the Trinity-Spadina, Ward 20 (11 February 2010).

specifically prohibited under the Code of Conduct Regulation governing Board members.¹⁶² At the end of the memo, the Chair advised Councillor Vaughan that he was “obligated to refer this matter to the Board for its consideration and action.”

On February 15, 2010, Chair Mukherjee sent the Board a confidential report titled “Complaint – Councillor Adam Vaughan.” In his report, the Chair recommended that the Board receive his memo to Councillor Vaughan and review Councillor Vaughan’s newsletter and his conduct in accordance with the Board’s policy on Board Members – Conduct Complaints. In his interview, the Chair stated that he also spoke to the Board’s Staff about Councillor Vaughan’s newsletter and shared his concern that “it could cause some problem because it *seemed to communicate information that the Board doesn’t have* and that it could be of a sensitive nature.”¹⁶³ The Chair also stated in his interview that his decision to initiate the complaint against Councillor Vaughan was founded on the “expectation or direction” from the Ontario Civilian Police Commission that “individual police boards are responsible for developing and monitoring policies with respect to member conduct.”¹⁶⁴

In a letter dated February 17, 2010, Councillor Vaughan responded to each of the concerns raised in the Chair’s memorandum. In terms of the reference to a “classified briefing,” Councillor Vaughan stated that he did not “disclose information that wasn’t already part of the public record or media discourse” and that at no point in his letter did he “reference a confidential discussion of the topic at the Board level.”¹⁶⁵ In terms of “serious disruptions,” Councillor Vaughan stated that disruptions related to the G20 Summit had already been discussed publicly with business organizations in his ward as well as in media reports aired and/or printed before the distribution of his newsletter. Councillor Vaughan noted that these briefings and reports “went beyond details provided to the Board by the Chief.”¹⁶⁶ With respect to the suggestion that Councillor Vaughan would use his seat on the Board, Councillor Vaughan answered that “it is right and proper that I use my seat on the Board to ensure city concerns regarding public safety are brought to the attention of the Chief and the Police Service[s] Board.”

This letter and Chair Mukherjee’s memorandum were put before the Board at a closed meeting on March 3, 2010. Following its discussion, the Board concluded that Councillor Vaughan had “committed a minor breach of the Code of Conduct” for which he received a caution from the Board.¹⁶⁷

In his interview, Councillor Vaughan stated that he took responsibility for using the term “classified” in his newsletter and agreed that, in hindsight, the use of that term was inappropriate and could create the impression that the newsletter actually contained “classified” information.¹⁶⁸

¹⁶² Internal Memorandum from Chair Alok Mukherjee to Councillor Adam Vaughan (15 February 2010).

¹⁶³ Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 30 [emphasis added].

¹⁶⁴ Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 34.

¹⁶⁵ Letter from Councillor Adam Vaughan to Chair Alok Mukherjee and the Board members (17 February 2010).

¹⁶⁶ Letter from Councillor Adam Vaughan to Chair Alok Mukherjee and the Board members (17 February 2010).

¹⁶⁷ Memo from Judi Cohen (Acting Chair) to the Board Office (3 March 2010).

¹⁶⁸ Review’s Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 79-81.

That said, Councillor Vaughan reiterated that the information divulged in the newsletter was not information that he had received as a member of the Board.¹⁶⁹ With respect to the other two issues – reference to serious disruptions and using his seat on the Board – Councillor Vaughan expressed concerns about the restrictions he perceived were being placed on his ability to communicate with his own constituents about policing and security matters:

...what it felt like was you communicate anything, any concern, you air any concern outside the in camera session and there will be repercussions for you, you have been warned...And what I felt like at this one was that, was that there was a whole series of, I was active on this file, it was happening in my ward and I think that it was, there was a significant amount of profile to it and you know, you're not supposed to, the Board Chair is supposed to speak, the Chief is supposed to speak, you're simply there for advice.¹⁷⁰

C. THE IMPLICATIONS OF THE COMPLAINT FILED AGAINST COUNCILLOR VAUGHAN

It was made clear to me during the interview process that the situation involving the complaint against Councillor Vaughan negatively impacted on the information-sharing situation between the Chief and the Board. For instance, Mr. Grange stated in his interview that the reason why Chief Blair was reluctant to provide information to the Board on various G20 issues was because Councillor Vaughan's newsletter created the perception that classified information was being shared with the public:

We should have been in lock step with the Chief and the Service in terms of information about what was going to happen, who was going to be responsible for what, during the G20. At the end of the day, my reading of it, and I still believe it today as the case, we were not in the same loop, collectively as a Board. Now, the Chair may have been in contact with the Chief and may have had certain information that he got from the Chief, but because of this incident with Adam Vaughan, there was a chilling factor that took place and the Chief was reluctant to give certain information in open Board in front of certain Board members because he was not confident that what was being said and presented in confidence, in a confidential meeting, would stay that way.¹⁷¹

Councillor McConnell also suggested that Councillor Vaughan's newsletter may have made Chief Blair's ability to obtain certain information from the other G20 policing partners and, therefore, the provision of that information to the Board more challenging.¹⁷² These challenges were corroborated by Chief Mukherjee in his interview:

Yes, the first communication from the Service was from the Chief's Executive Officer. He either came to see me or phoned me to say that Councillor Vaughan's *newsletter could potentially jeopardize the Chief's security clearance and that the RCMP had received this newsletter and had called the Chief immediately expressing their concern that the Chief was divulging confidential information* and then in February when I was with the Chief, the

¹⁶⁹ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 85 and 88-89.

¹⁷⁰ Review's Interview with Councillor Adam Vaughan (15 September 2011, Toronto) at 85.

¹⁷¹ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 101.

¹⁷² Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 122-123.

*Chief made a point of raising this with me and in fact used this as the reason why he was unwilling to give the Board what might be considered sensitive information, because he didn't feel that the information he gave would remain confidential.*¹⁷³

Chief Blair himself confirmed that Councillor Vaughan's "classified briefing" reference "did cause a bit of [a] stir in the law enforcement community."¹⁷⁴ While he was able to assure his law enforcement partners that no classified information had been disclosed, the situation was "a little problematic."¹⁷⁵ However, the Chief did not explicitly state in his interview that the situation involving Councillor Vaughan caused him to limit the type and amount of information provided to the Board in advance of the G20 Summit. Nevertheless, he did suggest that the reason he was comfortable providing the Board with regular updates on the three specific standing items, which were identified by the Chair *after* the Councillor Vaughan complaint, was because of the Chair's assurance that the Board was not requesting information on confidential, operational matters:

I had some discussion with the Board about the difficulty of providing confidential information and the need for it to be, to remain confidential, and I think that's reflected in Mukherjee's email to me about briefings that he wanted and that they did not want confidential information shared there.¹⁷⁶

D. THE REVIEW'S FINDINGS ON THE COUNCILLOR VAUGHAN COMPLAINT

As discussed in the first part of this chapter, Board members are required to keep confidential any information disclosed or discussed at a Board meeting that was closed to the public.¹⁷⁷ Accordingly, if Councillor Vaughan's newsletter contained information that he received at a closed meeting of the Board then he would be in violation of his duties and responsibilities as a Board member. The interviews we conducted on this matter highlight two inconsistencies. First, Chief Blair stated in his interview that the information contained in the newsletter was communicated to the Board at the confidential Board meeting on January 21, 2010.¹⁷⁸ However, as noted above, in his discussions with the RCMP about the newsletter, he confirmed that no "classified" information had been disclosed in that document. Second, Chair Mukherjee suggested in his interview that the newsletter communicated sensitive information that the Board "doesn't have."¹⁷⁹ These inconsistencies require me to examine the record, including the information provided to the Board in confidential meetings, to determine whether any information in Councillor Vaughan's newsletter was obtained only through a confidential communication to the Board.

¹⁷³ Review's Interview with Chair Adam Mukherjee (22 September 2011, Toronto) at 31-32 [emphasis added].

¹⁷⁴ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 66.

¹⁷⁵ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 66.

¹⁷⁶ Review's Interview with Chief William Blair (15 November 2011, Toronto) at 72.

¹⁷⁷ *Members of Police Services Boards – Code of Conduct*, O. Reg. 421/97, s. 4.

¹⁷⁸ Review's Interview with Chief William Blair (15, November 2011, Toronto) at 65.

¹⁷⁹ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 30.

Based on my review of the Board minutes, the reports from the Chief to the Board, the interview answers, and Councillor Vaughan's newsletter, I find that the content of that newsletter did not include any information that Councillor Vaughan received at a closed meeting of the Board. The reference to a "classified briefing" was unfortunate because it created the impression that some of the newsletter's content included "classified" information. However, none of what is stated in the newsletter includes any confidential information that Councillor Vaughan received in his capacity as a Board member.

The reference to there being "serious disruptions" during the G20 Summit does not, in and of itself, contain any confidential information. In addition, given the nature and size of the event it is my view that it was common public knowledge that the G20 Summit would result in serious disruptions and that the types of possible disruptions had already been discussed between the Toronto Police Service, the City of Toronto, and various organizations and individuals that might be impacted. Similarly, Councillor Vaughan's suggestion that he will use his membership on the Board "to make sure the interests of the ward and the city are respected as security issues come forward" does not violate the Code of Conduct Regulation. The Code of Conduct Regulation prohibits Board members from interfering with the Toronto Police Service's operational decisions and responsibilities.¹⁸⁰ Councillor Vaughan's statement does not, without more, violate this prohibition. Accordingly, I find that the Board's reaction to Councillor Vaughan's newsletter was unwarranted in the circumstances.

E. RESOLVING THE CHALLENGES THAT COME WITH PLAYING DUAL ROLES

Putting the specifics to the side for a moment, it is clear that the situation involving Councillor Vaughan's newsletter brings into focus the challenges that can arise when an individual wears two official hats – one as a member of the Board and another as an elected official with responsibilities to their constituents. It is fundamental that there be an open line of communication between Toronto City Council and the Board to ensure that information relevant to each entity is made available to it in a timely fashion. While the Board currently has a policy named the "City Council Protocol" on information sharing practices with the City of Toronto Council, it is my view that this policy does not go far enough.¹⁸¹ Under that policy, the Board is required to: (i) provide the City of Toronto Council with the opportunity to contribute to the development of the Board's business plan; (ii) provide information as required or requested by Council with respect to Board meeting agendas, minutes, budgets, and any other matter that may arise from time to time; and (iii) provide City Council with the Board's business plan and annual report.

While this policy requires the Board to communicate openly with City Council on certain matters, there is no reciprocal requirement on City Council to share information with the Board. The incident involving Councillor Vaughan's newsletter and the concerns raised by the Board regarding the unequal sharing of information both demonstrate that the Board's protocol with City

¹⁸⁰ *Members of Police Services Boards – Code of Conduct*, O. Reg. 421/97, s. 2.

¹⁸¹ Toronto Police Services Board Policy Manual, Board Policy AD-002 City Council Protocol (October 2003).

Council should encourage the mutual exchange of information. On August 17, 2011, the Board approved an amendment to the Board's existing City Council Protocol and sent a copy to the City Manager on October 26, 2011 for review and comment.¹⁸² The Board has not received a response from the City Manager. While some of the amendments relate to the consultation components of the policy and aim to provide City Council with more timely information about, for instance, the Board's meetings and business plans, the information sharing protocol is still one way – from the Board to City Council.

Recommendation No. 23: The Board should amend its information sharing protocol with City Council

The Board should amend its existing information sharing protocol with City Council to include a mutual information sharing mechanism. This mechanism should address the type of information to be shared and the method and frequency for sharing such information. The Board should also work with City Council to develop a protocol that ensures there is a free flow of communication to and from the Board and City Council with respect to the policing of major events.

A city councillor's seat on the Board should not compromise his or her work as an elected official, including the ability to provide information to their constituents. Of course, this does not come without limits. At all times, Board members who are also city councillors must abide by the oath of secrecy they swear or affirm to when they take their seat on the Board. This means that when they come into possession of information as a Board member that is confidential, the information must remain confidential. This is no different than the conduct that is required of city councillors when they receive information from City officials that is confidential, such as information concerning human resource issues or legal opinions. In those instances, city councillors come into possession of information that may be of interest or useful to their constituents but are prohibited from sharing it.¹⁸³

The G20 Summit was a challenging event that gave rise to new issues around the flow of information. These issues were unique because of the various policing partners involved. It was an environment of confidentiality and information sensitivity. Especially where police services from different jurisdictions are working together, there is a possibility that information-sharing practices and protocols will be different and sometimes even conflict. However, this cannot mean that the Board should be deprived of information that is essential to it fulfilling its statutory responsibilities. Policing partners from other jurisdictions that seek the Toronto Police Service's cooperation must understand that the Board is responsible for overseeing the Toronto Police Service and that transparency and an open information-exchange is essential to that oversight function. Therefore, it is necessary to ensure that a protocol is in place to facilitate the chief of

¹⁸² E-mail from Chair Alok Mukherjee to City Manager (26 October 2011).

¹⁸³ Council Procedures By-law made pursuant to s. 189 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A. Code of Conduct for Members of Council City of Toronto, Part 5: Confidential Information, at 5-6, available: <http://www.toronto.ca>

police's ability to share information with the Board in circumstances where the Toronto Police Service is involved in joint operations with other police services.

Recommendation No. 24: **The Board should, with the assistance of the Ontario Association of Police Services Boards, analyze the issues and concerns raised with respect to sharing confidential or classified information**

Sharing confidential or classified information between different policing partners is a complex issue that requires further study. Accordingly, I recommend that the Board request that the Ontario Association of Police Services Boards examine this issue carefully and propose solutions that would ensure that sensitive information is protected without detracting from the requirement that municipal police services share relevant information with the police services boards.

F. CONCLUSION

i. Concerns with the Board's general information sharing practices

In the first part of this chapter, I provided an overview of the different sources of information available to the Board (e.g. the Chief of Police at Board meetings, informal briefings with the Chief and other Board members, Board Staff, City of Toronto officials, counsel to the Board) and the Board's general practices for exchanging information between it and the Toronto Police Service. I also highlighted some of the concerns expressed by members of the Board regarding these practices (e.g. informal communications between the Chief and Chair which are not shared with the Board, difficulty adding items to the agenda, lack of an accurate record of Board meetings, lack of a mechanism to deal with last minute walk-on items, etc.). Finally, I discussed some of the more substantial concerns with respect to the quality and amount of information the Board receives.

In my view, these concerns are in large part attributable to the fact that the chief of police is all too often placed in the position of having to act as the main "gatekeeper" of the information transmitted to the Board. This makes the chief of police generally responsible for regulating the flow and substance of information provided to the Board. As a result, meetings between the chief of police and the Board often take the form of a one-way address as opposed to an open consultation concerning issues and matters impacting the Toronto Police Service.

The Board has indicated that there are two major hurdles that often get in the way of its being able to move beyond the "information gatekeeper" model that currently exists between the Board and the chief of police. The first relates to the Board's misunderstanding of the only prohibition on its actions – that is, under section 31(4) of the *Police Services Act*, not to *direct* the chief of police with respect to specific operational decisions. The Board's oversensitivity to not being seen to violate this very specific prohibition has caused it to limit the nature of the information it seeks from the Toronto Police Service. Second, the Board consistently struggles in knowing what

questions it needs to ask the chief of police to ensure it has sufficient information to perform its statutory functions. Together, these problems have constricted the flow of relevant information to the Board, thereby weakening its civilian oversight authority.

In order to resolve these issues, the Board needs to understand the importance of accessing relevant information from the chief of police during the planning stages of an operation or major event. From the very beginning of the planning process for a particular event, the Board should be engaged in and directing the priorities and objectives, identifying gaps in its existing policies, and developing new policies where necessary. This requires the Board to take proactive steps and regularly consult with the chief of police about the Toronto Police Service's mission and plans for the event. True consultation – that is, an exchange of information and ideas and, sometimes, debate – is required if the Board is to be equipped to effectively discharge its responsibility for providing adequate and effective policing by the Toronto Police Service for the event. Accordingly, the recommendations I have made with respect to the Board's general information-sharing practices address many of the issues discussed above and are aimed at ensuring there is a free flow of information to the Board at all times.

ii. The information the Board received in the lead-up to the G20 Summit was inadequate

I have concluded that far more information was available to the Board about the framework and the plan for the policing of the G20 Summit than it actually obtained.

While it may be true that information which should have been proactively brought by Chief Blair to the Board's attention was not, the Board must also share responsibility for gaps in its knowledge about policing the event. It could have asked many questions over the course of several months about how the plans for the G20 Summit were unfolding, what level of cooperation the Toronto Police Service was providing within the ISU, and how decisions about critical aspects of the policing for the event were being made. As a result of not having asked these and other questions, the Board was not sufficiently armed with detailed information or specifics about the G20 Summit. The Board's gap in knowledge extended to several essential matters, including:

- the legal framework for policing the G20 Summit, including the Toronto Police Service's request for additional legal powers or legal authority and the responses;
- the role and function of the ISU and the Toronto Police Service's role within the ISU;
- the Toronto Police Service's Operational Plans and strategy for its policing of the G20 Summit;
- the command and control structure that would be in place during the G20 Summit and the Toronto Police Service's role, duties, objectives, and operational authority within that structure; and
- the nature of the relationship between the Board and the police officers seconded to assist with the policing of the G20 Summit under the terms of various MOUs and the training provided to those officers.

Without information on these matters, the Board became a virtually voiceless entity, rendering itself to a large extent irrelevant throughout the planning leading up to the G20 Summit. In addition, without particulars about the Toronto Police Service's role within the larger security framework for the event, the Board did not have the information it required to fulfill its responsibility under the *Police Services Act* to ensure that adequate and effective policing was going to be provided by the Toronto Police Service during the G20 Summit.

A defining moment in the interaction between the Board and Chief Blair concerning the flow of information was Chair Mukherjee's e-mail to the Chief of March 16, 2010. This e-mail sought reports on three items only. The Chair's e-mail was the only direction the Board provided to the Chief regarding the information it sought concerning the G20 Summit. This, coupled with the specific language used to indicate that the Board was specifically not seeking information about operational matters, limited the information that would be provided to the Board to only the most basic items. While some Board members suggested in their interviews that they expected to receive information on areas that went beyond the three identified in the Chair's e-mail, it is clear from the record that the Board, with a few exceptions, was reluctant to request information beyond what was being provided to them.

Some Board members told us in their interviews that their unwillingness to ask questions and seek additional information stemmed from a perception that they would receive less information if they demanded it. For example, Councillor Vaughan stated in his interview that a Board member would be "branded as a trouble maker for asking questions and either stop asking questions or people dismiss your questions because you are a trouble maker."¹⁸⁴ In addition, Councillor Di Giorgio noted in his interview that even when the Chief provided an answer to the Board's questions, his responses were brief or lacking in detail: "You only get a very precise answer to the question you ask, but no effort will be made to take the opportunity to tell you something more."¹⁸⁵ I conclude that these challenges in the flow of information led some members to become disconnected, almost acting as spectators rather than as key participants in the civilian oversight process. Ms. Cohen best described her sense of disconnect and isolation:

I go back to my first point, I would have liked a full briefing, complete truthful briefing as this evolved on the challenges, on the risks, on the plans, on the partners, on the opposition, on the community issues, all aspects the Board should have been briefed on in a perfect world...No, but at some point, what you do is just say I'm not going to win this. You can't get more.¹⁸⁶

It would seem that at a certain point, Board members felt that they reached some sort of 'limit' in the information they were going to obtain from the Toronto Police Service and that requesting additional information was pointless. While there is no evidence on the record of any overt statement or conduct by the Toronto Police Service to shut down the flow of information to the Board, it cannot be coincidence that almost all Board members came to the view that seeking more

¹⁸⁴ Review's Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 29.

¹⁸⁵ Review's Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 64.

¹⁸⁶ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 93.

information was basically futile. Perhaps there was no overt action to resist providing information to the Board, but a sense of openness, transparency and forthrightness was not exhibited either. That being said, the Board did not make an effort to utilize the other sources of information available to it, such as Board Staff and legal counsel, to assist in identifying what information it required or what questions it should be asking to get the information it needed from the Toronto Police Service.

The application of a consultation protocol, which I have proposed in *Chapter 2 – Civilian Oversight in Policing*, would ensure in the future that where critical points arise – such as a major policing event in which the Toronto Police Service will participate – a mechanism will be in place to encourage and preserve the flow of relevant information from the Toronto Police Service to the Board.

Recommendation No. 25: The Board should develop an information sharing policy for major events

The Board should develop a specific information sharing policy tailored specifically for major policing events. The policy should include a direction concerning the manner and frequency in which the information should be provided to the Board.

Under this policy, the chief of police would be required to provide the Board with information, at the earliest possible opportunity, with respect to, at a minimum, the following matters: the nature of the event; the policing, security, and other entities involved in planning the event; whether the Toronto Police Service is taking planning or operational direction from another entity; information about the Toronto Police Service's proposed priorities and objectives; the need for any requests for legislative change to accommodate the Toronto Police Service's policing of event; and information about specific policing strategies or techniques that may be used during the event itself.

CHAPTER SEVEN: TRAINING OF POLICE FOR THE G20 SUMMIT

A. INTRODUCTION

This chapter addresses Term of Reference 9(f) regarding the training developed and administered to police officers deployed to police the G20 Summit:

9. (f) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, to police officers with the Toronto Police Service or were given by officers with the Toronto Police Service to police officers who were not with the Toronto Police Service but who were assisting with the policing of the G20 with respect to:

- (i) their obligations under the Charter of Rights and Freedoms and the Criminal Code,
- (ii) demanding identification from people,
- (iii) conducting searches of individuals and their property without a search warrant,
- (iv) arresting people without an arrest warrant, and
- (v) the use of force towards people participating in a demonstration.

The Toronto Police College was responsible for developing the training program administered to the Toronto Police Service and other external police officers, both within and outside Ontario, who were seconded to assist with policing the G20 Summit. Officers were required to complete various training components tailored specifically for the G20 Summit in the weeks leading up to the event. The training covered such topics as the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (“*Charter*”), crowd dynamics and management, investigative detention, search authorities, arrest process, and *Criminal Code*, R.S.C. 1985, c. C-46 provisions authorizing the use of force.

Information concerning the form and content of training administered by the Toronto Police College is addressed by the Office of the Independent Police Review Director’s *G20 Systemic Review Report* (“OIPRD Report”).¹ In this chapter, I shall focus on the specific questions posed by Term of Reference 9(f) and shall refer to the OIPRD Report only where necessary to avoid a duplication of discussion and analysis.

¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012), Chapter 11.

I interpret Term of Reference 9(f) as referring to the training provided in advance of the G20 Summit as opposed to the specific orders and instructions that were given to officers during the event itself. In that regard, I note that the remainder of Term of Reference 9, being 9(a) to 9(e), addresses the specific events that took place during the days of the G20 Summit itself. The OIPRD Report and the Toronto Police Service's *After-Action Review* canvass the issues raised in Terms of Reference 9(a) to (e) in significant detail,² including specific orders and instructions that were given in relation to the events referenced therein. The Review's own analysis does not contradict the findings of these reports and, therefore, I will not duplicate the efforts of the Toronto Police Service or the OIPRD by responding to those specific Terms of Reference.

For the purposes of this chapter, I have reviewed the Toronto Police Service's *After-Action Review Report*,³ interview answers provided by Chief Blair and the Toronto Police Services Board ("Board"), minutes of the Board meetings, transcripts from the Review's public hearings, and G20 training materials produced by the Toronto Police Service, including e-mail communications, PowerPoint presentations, training curriculums, and lesson plans.

In the first section of this chapter I shall provide a brief overview of the structure of the training provided to police officers in the lead-up to the G20 Summit followed by a more detailed review and evaluation of the training plans, assessing their form, content, and methodology in light of the unique challenges faced by the Toronto Police Service in planning for the G20 Summit. I will also consider some of the issues and concerns discussed in the earlier *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, regarding the Board's role, or lack thereof, in the development of the training materials and program for the police officers deployed to the G20 Summit.

B. THE STRUCTURE OF TRAINING

In preparation for the G20 Summit, the Toronto Police College designed a multi-step training program that was delivered to members of the Toronto Police Service and external police services in two components: (1) online, or "E-learning," training and (2) face-to-face training.⁴ In his interview, Chief Blair stated that "the training that was supplied in the online modules, the face-to-face training and the public order training was developed and delivered unique to the G20 event."⁵ The Toronto Police Service considered the training a necessary foundation to ensuring a safe and secure event for the delegates attending the event, the police officers, all personnel involved in policing the event, and the general public.⁶

² Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012), Chapters 3-6 and 8; Toronto Police Service, *G20 Summit After-Action Review* (June 2011).

³ Toronto Police Service, *G20 Summit After-Action Review* (June 2011).

⁴ E-mail from the Toronto Police Service to Uniform Senior Officers and Civilian Senior Officers (30 May 2010).

⁵ Review's Interview with Chief William Blair (25 November 2011, Toronto) at 93.

⁶ Toronto Police Service, Course Training Standard, "G20 Training Module 'A'", Course Code: LDS005 at 7; Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 8.

External police services that received training included other municipal police services in Ontario (e.g. Durham Regional Police) and specific officers, including from Public Order Units (“POUs”) across Canada (e.g. Saskatoon Police Services). POU officers are highly trained to defuse potentially violent situations and proactively manage crowds. The OIPRD Report notes that some outside police services also “provided additional G20 training,” but the scope, content, and form of that training are not described.⁷ The materials provided to the Review do not help clarify what, if any, additional G20-specific instructions or training were provided by police services other than the Toronto Police Service.

i. Online or E-Learning Training

The Toronto Police College administered two online training sessions, Training Modules A and B, which were made accessible via the internet through the Canadian Police Knowledge Network (“CPKN”). CPKN is an organization that provides online training solutions for Canadian police and law enforcement personnel. CPKN works with experts from the Canadian policing community to develop and deliver E-learning courses to meet the needs of front-line officers.⁸ With respect to the G20 Summit training, the purpose of the online modules was to provide a basic overview of the cognitive skills required of all officers deployed to the Summit. Through the online training sessions, Toronto Police Service officers and external police officers received instruction on issues that might affect public and officer safety during the G20 Summit.⁹ These issues are discussed in more detail below. Each of Training Modules A and B required an average of 2.5 hours to complete.

Chief Blair noted in his interview that while online training of police officers was a relatively new concept at the time, it was appropriate in the circumstances of planning for the G20 Summit given both the number of officers that required training and the time sensitive nature of the event itself:

Training is an expensive proposition, not just in the delivery of it, but in the receiving of it. You've got to take people out of the line and we were looking at cost effective ways to deliver that too. We could not afford to take everybody off the street while we trained them for this event. That's one of the reasons a lot of it was done online on E-learning. E-learning is a relatively new innovation in police training and it was employed to good effect in this case. But we also recognize that we needed to have that face-to-face training in preparation for this as well because there were a lot of people, not terribly experienced in dealing with large control measures and in working in an integrated environment as this was going to be. Given the timeframes, I am quite satisfied with the effort that went into this and you would always like to have more time, you can never train too much and I don't think we've ever reached a point where we'd ever assume anybody was over trained. But given the circumstances, given the time frames, given

⁷ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012), Chapters 3-6 and 8. at 258.

⁸ About CPKN, online: Canadian Police Knowledge Network <<http://www.cpkn.ca/>>.

⁹ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 7; Toronto Police Service, Course Training Standard, “G20 Training Module ‘B’”, Course Code: LDS006 at 8.

the complexity of this issue, I am satisfied with the effort that went into it and the investment [that] was made.¹⁰

In addition to Training Modules A and B, police officers from outside Ontario were required to complete a separate online training session addressing Ontario-specific statutes and regulations that may have applied during the policing of the G20 Summit (e.g. the *Highway Traffic Act*, *Trespass to Property Act*) (“Provincial Statutes Training”). The Provincial Statutes Training was also administered by the Toronto Police College and required an average of 1.5 hours to complete.¹¹ While Royal Canadian Mounted Police (“RCMP”) officers were among the external police officers who completed the online training modules, the record indicates that the RCMP did not wish to take part in the additional Provincial Statutes Training developed by the Toronto Police Service.¹² However, this component of the training curriculum was necessary for RCMP officers to complete in order to be appointed as special constables for the G20 Summit and, specifically, so the RCMP officers could enforce provincial laws.

In an e-mail between members of Toronto Police Service’s G8-G20 Planning Team, an inquiry was made concerning whether the Toronto Police Service could “mimic the on-line training” and deliver it to the RCMP in the form of a “supervised workbook session” on the RCMP’s scheduled training days (June 18 to 19, 2010), rather than requiring these RCMP officers to complete the training online. Chief Blair advised the Review that uniformed RCMP officers deployed in Toronto received further instructional briefings at the main staging location for its officers.¹³ However, it is unclear from the record whether a response was ever provided to this e-mail or whether this additional briefing included information that had been developed for the Provincial Statutes Training.¹⁴

Even if the RCMP received some form of Provincial Statutes Training, this training was scheduled to be delivered only one day before the RCMP’s deployment in Toronto for the G20 Summit. This simply did not leave enough time for RCMP officers to properly familiarize themselves with provincial laws that may have applied to their policing activities during the event.

ii. Face-to-Face Training

A one day in-class, face-to-face training session was administered by the Toronto Police College to reinforce the skills taught in the online training sessions and to provide officers with practical application opportunities.¹⁵ Successfully completing the online Training Modules A and B were a prerequisite to participation in the face-to-face training, which required approximately 10 hours to complete.

¹⁰ Review’s Interview with Chief William Blair (25 November 2011, Toronto) at 93-94.

¹¹ Toronto Police Service, Course Training Standard, “G20 Training”, Course Code: LD2007 at 8.

¹² Internal Toronto Police Service e-mail (14 May 2010).

¹³ Toronto Police Service Answers to Undertakings, No. 30 (21 February 2012).

¹⁴ Internal Toronto Police Service e-mail (14 May 2010).

¹⁵ Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG at 7.

A unique face-to-face training program was also developed for the POU officers from both within and outside Ontario who were assisting with the G20 Summit. The POU mass training session took place on June 18 and 19, 2010. The objective of the training, as described by a senior member of the Toronto Police Service G8-G20 Planning Team, was to “facilitate, and demonstrate, that we [the Toronto Police Service] are committed to creating conditions for peaceful protest in recognition of Canadian democratic rights.”¹⁶ Chief Blair advised in his interview that the training took place in some of the large parking lots located on Cherry Street in Toronto and that the RCMP, the Ontario Provincial Police (“OPP”), and other outside POU officers were present during the training. The training curriculum was developed in part from topics identified by the POU officers themselves and included equipment training (e.g. use of a water cannon).¹⁷ Below, I review the content of this face-to-face training as it relates to certain topics identified in Term of Reference 9(f).

In addition to the training I have described, a handbook was also provided to all officers involved in policing the G20 Summit. The material covered in this handbook represents a condensed summary of some of the information presented in Training Modules A and B and the non-POU face-to-face training discussed above. The purpose of the officer’s handbook was to provide a general quick reference guide that officers could rely on during the G20 Summit. Specific information about the location of the command centres, arrest information, and sensitive information was purposely excluded from the handbook in order to eliminate any issues that could arise should a member of the public obtain a copy of the handbook.¹⁸

iii. An overview of who participated in the training sessions

a. Online or e-learning training

Participation in the different training components was dependent on an individual officer’s specific assignment during the G20 Summit. As noted above, Training Modules A and B were mandatory for all police officers who were going to be deployed under the Toronto Police Service’s command during the G20 Summit. In addition, Court Services officers and civilian members of the Toronto Police Service who were assigned G20 Summit duties (e.g. civilian members assigned to the Prisoner Processing Centre) were required to complete the online training.

Officers deployed to the G8 Summit in Huntsville were not required to complete Training Modules A and B although they were on stand-by for deployment to Toronto in the event their assistance was required. The rationale given for not requiring officers assigned to the G8 Summit to participate in the online training was that they were already “trained public order members” who had “all received training and briefing from the RCMP and OPP prior to deployment” and

¹⁶ Internal Toronto Police Service e-mail (30 March 2010).

¹⁷ Review’s Interview with Chief William Blair (25 November 2011, Toronto) at 91-92 and e-mail between Toronto Police Service Training Personnel (12 March 2010).

¹⁸ Advisory Committee Meeting Results (30 April 2010).

would only be deployed to Toronto on an *ad hoc* basis.¹⁹ Chief Blair confirmed that officers assigned to G8 duties in Huntsville received all of their training through the OPP or the RCMP and there was no requirement on these officers to take the online training modules.²⁰

In my view, the exclusion of officers deployed to the G8 Summit from participation in the online training program developed for the G20 Summit is questionable for two reasons. First, there was the potential that these officers would be deployed to the G20 Summit to assist with policing in Toronto. If so deployed, these officers would be under the command and control of the Toronto Police Service and would be required to abide by Toronto Police Service procedures and policies, as well as orders and instructions received from the Major Incident Control Centre (“MICC”). Accordingly, these officers should have been exposed to the G20-specific training that was developed by the Toronto Police Service and based, in large part, on its existing procedures. Second, the officers deployed to the G8 Summit were trained by the OPP and RCMP in accordance with their own unique police tactics and strategies, which may have differed significantly from the tactics and strategies used by the Toronto Police Service in its policing of protests and demonstrations in Toronto. The Toronto Police Service should have been alive to this issue and ensured that these officers were properly trained in accordance with the Toronto Police Service’s own procedures and authorized use of force options. In Board Member and City Councillor Adam Vaughan’s interview he discussed some of the different tactics employed by the OPP that did not form part of the Toronto Police Service’s operating procedures:

There is a tactic where you start beating your shield with your baton and I’ve had it understood to me that the reason they do that is to make sure that everyone in the unit is in rhythm and its not really meant to scare the crowd, although it does, and it has that effect so there were other ways to do that and one of the things the Toronto Police force sort of had assured us they didn’t do was that tactic but they couldn’t, they couldn’t assure us that the OPP, if operating in Toronto, would not use the same, the same technique because that was part of their standard operating procedure. So it was these sorts of splits that we were exploring as to where police policy and where police practice in Toronto differed from other forces in a very pronounced way, what would prevail and it was clear that the Chief only had real control over his forces, that other jurisdictions and other levels of policing would be governed by their protocols and their standards.²¹

b. Face-to-face training

The face-to-face training was only mandatory for all front-line police officers assigned specific duties for the G20 Summit and for Court Services officers assigned to wagon duty.²² Chief Blair confirmed in his interview that all external officers assigned to Toronto who were under the Toronto Police Service’s command were required to receive face-to-face training.²³ However, I note that the external police officers who completed the face-to-face training were officers from

¹⁹ Internal Toronto Police Service e-mail (3 June 2010).

²⁰ Toronto Police Service Answers to Undertakings, No. 20 (21 February 2012).

²¹ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 5-6.

²² E-mail from the Toronto Police Service to Uniform Senior Officers and Civilian Senior Officers (30 May 2010).

²³ Review’s Interview with Chief William Blair (25 November 2011, Toronto) at 90.

Ontario municipal police services only and did not include out-of-Ontario officers.²⁴ Officers who were expected to become involved with protests or be in the vicinity of the G20 Summit, such as the Special Constables of the University of Toronto Police Service and the Toronto Transit Commission, were invited but not required to participate in the face-to-face training.²⁵

As of June 16, 2010, the last day the Toronto Police College administered face-to-face training, the total number of officers who completed the training sessions developed for the G20 Summit was as follows:

Training Session	Toronto Police Service Officers	External Officers	Total
Training Module A	6,345	2,077	8,422
Training Module B	6,045	2,083	8,128
Online Provincial Statutes	N/A	1,093	1,093
Face-to-Face	3,224	373	3,617 ²⁶

The number of police officers who completed the online training components may have continued to rise moderately in the days leading up to the G20 Summit.

C. THE DEVELOPMENT OF THE TRAINING CURRICULUM

i. Design and approval of the training curriculum

As noted at the beginning of this chapter, Toronto Police College officials, who were themselves members of the Toronto Police Service, were responsible for designing the training curriculum for police officers assisting with the G20 Summit. Correspondence between members of the Toronto Police Training Sub-Committee, which was formed for the purposes of assisting in the development and implementation of the training provided for the G20 Summit, indicate that initial planning for the online training (Training Modules A and B) began in February and March 2010.²⁷ In the months that followed, the substantive online and face-to-face training materials were developed and drafted. An e-mail from a member of the Toronto Police Service Training and Education Unit suggests that the Toronto Police Service reviewed existing PowerPoint presentations to assist it in developing the framework and curriculum for the G20 Summit training and used these materials to establish appropriate learning objectives and course training standards.²⁸ Some of the required training materials were reviewed by counsel and may have been developed on the basis of specific feedback given by counsel (e.g. the *Public Works Protection*

²⁴ Chart, G20 Face to Face Training, Toronto Police College.

²⁵ E-mail from the Toronto Police Service to Uniform Senior Officers and Civilian Senior Officers (30 May 2010).

²⁶ Internal Toronto Police Service e-mail (16 June 2010).

²⁷ Internal Toronto Police Service e-mail (7 March 2010).

²⁸ Internal Toronto Police Service e-mail (22 March 2010).

Act information which, as described below, formed part of the online Provincial Statutes Training).²⁹

Course outlines for Training Module A were initially approved by Toronto Police College officials on April 20, 2010 and received final approval on June 8, 2010.³⁰ Course outlines for Training Module B were initially approved on May 1, 2010³¹ and also given final approval on June 8, 2010. Course outlines for the face-to-face training were approved on May 31, 2010.³² Course outlines for the online session for the Provincial Statutes Training were approved on June 7, 2010.³³

ii. The issue of timing in the development of the training curriculum

As discussed in *Chapter 3 – Planning and Policing of the G20 Summit*, the Toronto Police Service was required to plan for the G20 Summit in a much shorter timeline than is usually provided for security events of this magnitude. The issue of timing presented challenges in a number of areas, which I have explored in earlier chapters. The training component of the Toronto Police Service's plans for this event was no exception. The Toronto Police College had only a few months to develop comprehensive training materials that would properly equip thousands of police officers, both from within and outside Ontario, with different assignments to fulfill their policing duties in accordance with applicable law, Toronto Police Service procedures and the Toronto Police Service's operational plans for the event.

Early in the development process, concerns were raised by Toronto Police College officials about the impact these timing issues may have on the development of an adequate training program. For instance, in an e-mail to a senior member of the Toronto Police Service, the G8-G20 Training Coordinator set out some specific concerns with the Toronto Police Service's existing training curriculum for the G20 Summit in Toronto with an emphasis on the delivery through online training:

I am very concerned that the Toronto Police Service training plan falls way short of the above [Seattle police] training. I am concerned that with the G8/G20 project and several others the Toronto Police Service has become over-confident in the effectiveness of elearning. While elearning may be good for purely cognitive training, I do not see it as a particularly useful method for the complex judgment/skill type of training I believe will be needed. I am also concerned that there is no overall coordination of all of the training for all of the police officers and civilian members who will be providing a wide variety of police services in the midst of an event which is much larger than that held in Seattle.³⁴

²⁹ Internal Toronto Police Service e-mail (4 May 2010).

³⁰ Toronto Police Service, Course Training Standard, "G20 Training Module 'A'", Course Code: LDS005 at 3.

³¹ Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 3; Toronto Police Service, Course Training Standard, "G20 Face-to-Face Front Line Officer Training", Course Code: G20TRG at 6.

³² Toronto Police Service, Course Training Standard, "G20 Face-to-Face Front Line Officer Training", Course Code: G20TRG at 7.

³³ Toronto Police Service, Course Training Standard, "G20 Training", Course Code: LD2007 at 3.

³⁴ Internal Toronto Police Service e-mail (7 March 2010).

The e-mail goes on to compare the Toronto Police Service's current training plans with those developed and administered by the Seattle police department in respect of the World Trade Organization Ministerial Conference which took place in Seattle in 1999. Specifically, the e-mail states that the Seattle police department had trained over 900 personnel in crowd management techniques for a total of 21 hours of training time per officer, including attendance at weekly practice sessions, an initial crowd management class, and face-to-face demonstration sessions. When these concerns about the sufficiency and method of delivery of training were put to Chief Blair in his interview, he emphasized the limited amount of time the Toronto Police Service was provided to plan for the G20 Summit:

[W]e've commented so many times on the impact of such a truncated preparation and planning time. I think [the G8-G20 Training Coordinator] is reacting to what he perceives and he's quite right. We don't have a lot of time to get this thing done and we need to really escalate the effort to come up with an appropriate planning process in order to meet the needs of this event and I think everyone had a sense of urgency around this. [...]

I think everybody including the email from [the G8-G20 Training Coordinator] would indicate they would have liked to have a lot more time, but everybody, they rolled up their sleeves pretty quickly on this I think and [the G8-G20 Training Coordinator], as is his responsibility, quickly identified the important things that needed to get done....³⁵

When asked whether he was satisfied with the level of training provided to G20 officers, Chief Blair answered affirmatively but again framed his response in light of the short preparation and planning time available for the training:

Given the timeframes, I am quite satisfied with the effort that went into this and you would always like to have had more time, you can never train too much and I don't think we've ever reached a point where we'd ever assume anybody was over-trained. But given the circumstances, given the timeframes, given the complexity of this issue, I am satisfied with the effort that went into it and the investment that was made.³⁶

The total amount of training time, including the online training modules, the Provincial Statutes Training, and the face-to-face training totalled no more than 16.5 hours for regular police officers (i.e. this number does not include the specific face-to-face training delivered to the POU teams). However, all officers who assisted with the G20 Summit did not receive the same amount of training as they did not all participate in each component of the training curriculum. In my view, more time should have been devoted to the training of officers deployed to the G20 Summit given the size of the event, the complexity of the joint security operations, and the different roles assigned to each of the officers assisting with policing the event. Nevertheless, it is clear that an effort was made to develop different training models and tools (online presentations, videos, interactive elements, evaluations, etc.) to ensure that each officer who participated in policing the G20 Summit received a basic amount of common training on a number of G20-specific topics and issues.

³⁵ Review's Interview with Chief William Blair (22 November, 2011, Toronto) at 89.

³⁶ Review's Interview with Chief William Blair (22 November 2011, Toronto) at 94.

Based on the record before me, there is no indication that the Toronto Police Service took steps to address the concerns raised about the sufficiency of training. I recognize that preparation and planning for the training was limited by significant time constraints but these concerns were raised early on (March 7, 2010) in the planning for the G20 Summit. In my view, these concerns were significant enough that additional resources and attention should have been dedicated to resolving them. In fact, as the e-mail from the G8-G20 Training Coordinator suggests, there was still sufficient time to develop additional training assessments and programs for the various policing areas that would be required for the G20 Summit and to examine delivery of these programs through methodologies other than E-learning.³⁷

D. THE CONTENT OF THE TRAINING

i. Training Module A

Training Module A was the first of two online training sessions. As noted above, this training module was mandatory for all police officers under the Toronto Police Service's command who were charged with policing the G20 Summit. Officers were required to complete the training prior to being deployed to the Summit. The purpose of this module was to provide an overview of the basic skills required of officers to police the event properly. Training was provided on a number of topics, including:

- crowd dynamics and management;
- chemical, biological, radiological, and nuclear response ("CBRN Response");
- the Incident Management System³⁸;
- protocols for dealing with bomb threats and explosions;
- proper use of gas masks; and
- use of the Long-Range Acoustic Device ("LRAD").

After receiving instructions on each of the above matters, officers were required to take a short test to demonstrate their understanding of the topics presented. I shall describe this training immediately below in more detail as it relates to certain subject matters listed in Term of Reference 9(f).

³⁷ Internal Toronto Police Service e-mail (7 March 2010).

³⁸ The Incident Management System (the "IMS") is a provincially recognized system used regularly by the Toronto Police Service (Review's Interview with Chief William Blair (25 November 2011, Toronto) at 61). It provides standardized organizational structures, functions, and processes for use at all levels of emergency response in Ontario and is used to coordinate responses to all types of incidents. (Incident Management System, Ministry of Community Safety & Correctional Services, online: <http://www.emergencymanagement.ontario.ca>).

a. Crowd Management Training

Instruction on crowd management formed the largest part of Training Module A and was broken down into two parts: Crowd Management I and Crowd Management II. The purpose of the first part was to provide officers with an understanding of crowds and crowd theory in order to ensure that “some of the mistakes made by other G20 host cities are not repeated.”³⁹ The second part of the module built upon the crowd theory portion in Crowd Management I and addressed issues such as interacting with a crowd and the Toronto Police Service Code of Conduct. Both parts aimed to provide the necessary starting point for successful interaction between the police and the public during the G8 and G20 Summits.

Specific topics canvassed in Crowd Management I and II included: crowd types and their traits; the basic tenets of crowd interaction; stages of crowd escalation; crowd baiting tactics; identifying differences between orderly and disorderly crowds; how to manage a riotous crowd; and public order deployment and response factors.

A section was also devoted to a discussion about police responsibilities, including protecting the lives and property of citizens, protecting members of lawful assemblies, preventing breaches of peace, and performing duties using no more force than necessary. This section stressed the importance of the right of peaceful assembly and made specific reference to the *Charter* and the *Canadian Bill of Rights*, S.C. 1960, c. 44.⁴⁰ The topic outline developed for the crowd management course stressed that the right of peaceful assembly will “form the foundation for managing and interacting with members of the crowds that the officers will interact with.”⁴¹

The content devoted to crowd theory and management required an average of 55 minutes to complete (40 minutes for Crowd Management I and 15 minutes for Crowd Management II), representing over one third of the total 2.5 hours allocated for Training Module A.⁴²

The Toronto Police Service should be commended for the significant focus on crowd dynamics and management in Training Module A. Some of the greatest risks to both public and police safety and security can arise in the context of a mass protest. Understanding crowd theory and management is a critical part of safety planning for any major event. Given the unprecedented size and security needs of the G20 Summit, it is fair to say that most police services in Ontario had not before encountered a major policing event of this nature, including the real potential for widespread protesting by thousands of individuals in and around Toronto. Therefore, it was essential that a significant portion of the training provided to the Toronto Police Service and other external police services focused on providing the officers deployed during the G20 Summit with crowd management skills that are respectful of the rights guaranteed under the *Charter*.

³⁹ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 9.

⁴⁰ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 11-14.

⁴¹ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 9.

⁴² Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 11 and 13.

Based on my review of the training materials utilized for Training Module A, the discussion of the section 2(c) *Charter* freedom of peaceful assembly in the context of crowd management issues was cursory at best. Of course, given the history of G8 and G20 Summit protests around the world, it is understandable that the training developed on the issue of crowd management would be aimed at ensuring that officers were well-trained to control a disorderly crowd and manage a riot – matters with which they had little to no prior experience. However, the training materials do not provide any detailed instruction or examples of how police officers could practically support and facilitate peaceful assembly while executing their law enforcement duties during the G20 Summit. Rather, the training placed a disproportionate emphasis on instruction and theory regarding the management of disorderly crowds to the exclusion of training that addressed the essential relationship between creating conditions for peaceful assembly and successful crowd management. Training directed at this important aspect would have contributed to a more balanced view among officers regarding the approach to crowd dynamics during the G20 Summit.

b. The LRAD

Police officers deployed during the G20 Summit also received training on the use of equipment procured by the Toronto Police Service to assist during the policing of the Summit. As noted in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*, police officers received training on the proper use of the LRAD, a device used by law enforcement personnel to send instructions and warnings to large crowds over wide distances. As discussed in that chapter, the Board raised concerns about the potential use of the LRAD, specifically whether the device could be considered a weapon and to what extent the Toronto Police Service considered risk and liability issues in making the decision to acquire this piece of equipment. These issues were addressed in a report prepared by Board Member Judi Cohen and were discussed with other members of the Board and Chief Blair at the June 4, 2010 special closed meeting of the Board and the subsequent June 11, 2010 special public meeting.⁴³

It is not surprising then, that the focus of the LRAD training was to ensure that officers policing the G20 Summit were familiar with the purpose and capabilities of the device, which were defined in the training materials as being used to provide clear directions and instructions to individuals during the G20 Summit. Reference was made in this portion of the training to the *Charter* and the *Canadian Bill of Rights*, although it is unclear from my review of the materials presented what specific rights and freedoms were covered in this part of the module and to what extent they were addressed.

ii. Training Module B

Training Module B was the second of two online training sessions that all police officers deployed under the command of the Toronto Police Service during the G20 Summit were required to complete. As with Training Module A, this course was designed as a basic overview of the

⁴³ Toronto Police Services Board Minutes (11 June 2010) (Special Open Meeting), Item #P161, “G20 Summit – Preparations and Equipment Acquisition,” and Toronto Police Services Board Minutes (4 June 2010) (Special Closed Meeting), Item #C182, “G20 Summit – Long-Range Acoustic Device and Equipment Acquisition.”

cognitive skills required of officers and basic information relevant to law enforcement during the Summit. Training Module B required an average of 2.5 hours to complete. Again, each topic of Training Module B was followed by a short test. The training content included the following topics:

- public order incidents;
- investigative detention;
- search incident to arrest;
- arrest process;
- gate management;
- radio usage protocols;
- areas of staging and the PATH;
- the Community Relations Group; and
- the OIPRD.

Based on my review of the information presented in relation to these subjects, Training Module B presented an accurate and comprehensive instruction on a number of important and relevant issues relating to the effective policing of the G20 Summit. I shall describe this training in more detail below as it relates to certain subject matters identified in Term of Reference 9(f).

a. Public order incidents and breach of the peace

Instruction on public order incidents formed a significant portion of Training Module B. The objective of this portion was to provide police officers with the necessary information and foundation to address situations where there is no reasonable alternative to using force. Materials devoted to public order incidents required an average of 35 minutes to complete.⁴⁴ Specific topics canvassed in this portion included: the authority to use force; powers of arrest for “breach of the peace”; unlawful assembly; issuing a proclamation; officer duties upon notice of a riot; and elements of the various offences that could be committed when dealing with a mass demonstration.⁴⁵

Based on a review of the PowerPoint presentation and lesson plans developed for Training Module B, this portion of the training included a detailed discussion of the established authority for use of force in a crowd situation with reference to the applicable *Criminal Code* provisions and case law. It emphasized that use of force should be “used as a last resort” and when it is used, it

⁴⁴ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 11 and 13.

⁴⁵ Toronto Police Service, Course Training Standard, “G20 Training Module ‘A’”, Course Code: LDS005 at 11-14.

should be authorized and measured.⁴⁶ Officers were advised that the use of force option must be considered on a case-by-case basis and should only be used in situations where an officer is “able to articulate the reason for the application of force and the amount used.”⁴⁷ The training made clear that officers may be held criminally responsible for any use of force in excess of what is required in the circumstances.⁴⁸ In the context of an event like the G20 Summit where the use of police force that takes place is well documented, the Toronto Police Service should be credited for ensuring that its training included an honest and clear explanation of the parameters and limitations of police powers. This discussion usefully framed the subsequent face-to-face training on public order incidents and *Criminal Code* offences.

The public order incidents section in Training Module B also included a brief discussion of the breach of the peace power under section 31 of the *Criminal Code* as well as the constituent elements of other offences that police officers may encounter during the G20 Summit. The breach of the peace arrest power was defined in the training materials as “[a]cts or actions resulting in actual or threatened harm to someone. Further, police may arrest individuals whom are about to join in or renew the breach.”⁴⁹ As documented in the OIPRD’s Report, this arrest power was resorted to on numerous occasions during the event and formed the basis of some of the police actions specified in Terms of Reference 9(a) to (e).⁵⁰ While I make no finding as to whether the arrests for breach of the peace were legal, as that it is a matter properly before and within the jurisdiction of the courts, I find it necessary to comment on the general use of this arrest power given the documented frequency of its use during the G20 Summit. It is clear from what unfolded during the G20 Summit that the breach of the peace arrest power was relied upon as a mechanism to control both individuals and crowds. As I have said in *Chapter 8 – Policies and Procedures concerning Crowd Control and Mass Demonstrations*, this engages important issues that should be reflected upon by the Board. A Board policy on crowd control that reflects applicable legal standards and takes into account the social science research in this area will provide useful guidance for the Toronto Police Service when it develops its training related to policing of crowds for future events.

Overall, the training on public order incidents was lacking in several respects. For instance, none of the training materials included practical examples of when to use crowd tactics or how to actually apply the legal concepts conveyed in Training Module B to possible scenarios that officers may have faced during the G20 Summit. Providing theoretical information is an important component of police training, but it would have been far more effective to couple theory with practice that could have aided officers in making tactical or strategic decisions about how to handle specific situations. This deficiency in practical training is made explicit by one slide in Training Module B, which asked “Why is this important to know[?]” with reference to *Charter* rights. The slide answered simply “self-preservation” and listed inquests, civil law suits, and

⁴⁶ G20 Training Module B PowerPoint Presentation, Section 1: Crowd Use of Force, at 1 of 35.

⁴⁷ Toronto Police Service, Course Training Standard, “G20 Training Module B,” Course Code: LDS006 at 12.

⁴⁸ G-20B Training Module, Section 1: Crowd Use of Force at 1 of 30 to 5 of 30.

⁴⁹ G-20B Training Module, Section 1: Crowd Use of Force at 7 of 30 to 8 of 30 [emphasis added].

⁵⁰ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012), Chapters 4 to 6.

complaints as possible consequences of excessive police powers.⁵¹ Instead, this component of the training should have emphasized that the police have an important role to play in the creation of an environment that facilitates the expression of *Charter* rights and that if executed effectively, the resort to law enforcement options may be minimized. Instead, officers were trained to view their “self-preservation” as a primary objective. This issue was not unique to the online curriculum on public order incidents. As I will explain, other components of the training suffered from a similar degree of abstraction and lack of situational examples.

b. Investigative detention

As part of Training Module B, police officers also received instruction on investigative detention. Materials devoted to investigative detention required an average of 20 minutes to complete.⁵² The aim of this portion of the training was to ensure that the detention of an individual in a crowd, as with other exercises of police power during the G20 Summit, did not become a precipitating factor which could cause the “crowd to move to a disorderly state.”⁵³

The training reviewed the concept of investigative detention and how it should be used in a crowd situation, taking into consideration the effect on the crowd. Specific topics canvassed in this part included: the definition of investigative detention; circumstances that support an investigative detention; the test used to determine whether an individual has been detained; statements that support a finding that an individual has been detained; circumstances when an individual must be informed of their legal rights; and how to properly articulate the reasons for detaining an individual using examples from court decisions.⁵⁴

The investigative detention component of the training included a useful summary of the police’s ancillary power to detain or search an individual where there are reasonable grounds to suspect the individual is connected to a particular crime and that such detention or search is necessary.⁵⁵ The training contextualized its discussion of the reasonableness of an officer’s decision to detain in relation to the extent of interference with an individual’s rights guaranteed by sections 7 to 10 of the *Charter* (e.g. the right to counsel without delay, the right to be informed of the reasons for detention, etc.). The concept of investigative detention was also informed by a review of some of the leading Canadian court decisions on the topic.⁵⁶ The training materials also provided examples of specific situations, suspect characteristics, and police language which, if present, may contribute to a finding that a detention occurred and triggered the legal rights enumerated in the *Charter*.⁵⁷ Although the training would have benefitted from a more detailed explanation of the specific *Charter* rights, the overall treatment of investigative detention and its relationship to the

⁵¹ Toronto Police Service Training, G20 (June 2010) at 4.

⁵² Toronto Police Service, Course Training Standard, “G20 Training Module ‘B’”, Course Code: LDS006 at 15.

⁵³ Toronto Police Service, Course Training Standard, “G20 Training Module ‘B’”, Course Code: LDS006 at 15.

⁵⁴ Toronto Police Service, Course Training Standard, “G20 Training Module ‘B’”, Course Code: LDS006 at 15.

⁵⁵ G-20B Training Module, Section 2: Investigative Detention at 1 of 29 to 13 of 29.

⁵⁶ G-20B Training Module, Section 2: Investigative Detention at 13 of 29.

⁵⁷ G-20B Training Module, Section 2: Investigative Detention at 13 of 29 to 27 of 29.

Charter in the materials was both appropriate and necessary given the increased potential for *Charter* violations in the context of policing mass public demonstrations.

Nonetheless, as in the case of the online training components regarding public order incidents, the training on investigative detention was not particularly useful in identifying specific examples that officers would likely encounter in the area of investigative detention. The materials should have applied the legal principles to likely scenarios modeled after those the police have encountered at prior public demonstrations, including previous G8 and G20 Summits. These scenarios would have been of particular assistance for the online training component, as not all officers were required to undergo the subsequent face-to-face training.

c. Search incident to arrest

Training Module B also provided instruction on searches incident to arrest. This aspect of the training was aimed at strengthening an officer's ability to articulate grounds for searches incident to lawful arrest during the G20 Summit. Materials devoted to search authorities required an average of 25 minutes to complete.⁵⁸ The topics covered in this part of the module included: the common law authority and basis for conducting a search incident to arrest; how a search must be conducted; the importance of being able to articulate the reason for a search and identify the nexus between the nature of the search and the offence for which the person was arrested; specific direction concerning various types of searches (e.g. vehicle searches, strip searches, weapons searches, and cell phone searches); and special search rules that apply in exigent circumstances where no search warrant is obtained.⁵⁹

This portion of the training contained a fairly detailed summary of a police officer's power to search incident to arrest, including information regarding the limitations on that power.⁶⁰ The specific content that explained the authority to conduct vehicle searches, strip searches, weapons searches, and cell phone searches⁶¹ was particularly topical in light of the potential security risks associated with vehicles approaching the Interdiction Zone, the possibility of individuals carrying concealed weapons, and communications that would be organized via social media-enabled cellular technology. The training did not, however, link its legal content to these identified risks. There were no practical examples that illustrated how the various search authorities may be applied to properly and effectively police the G20 Summit while at the same time maintaining a balance with the constitutional rights to freedom of expression and freedom of peaceful assembly. Once again, the training would have benefited from the materials making an explicit connection between abstract legal principles and scenarios that could reasonably be anticipated to unfold during the event itself. Further, although this part of the training focused directly on the power of a police officer to search an individual, there was no discussion of the corresponding right of an individual to be free from unreasonable search and seizure as prescribed by section 8 of the *Charter*. In fact, in the entire Training Module B materials, this right is only considered briefly

⁵⁸ Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 17.

⁵⁹ Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 17.

⁶⁰ G-20B Training Module, Section 3: Search Authorities at 1 of 22 to 4 of 22.

⁶¹ G-20B Training Module, Section 3: Search Authorities at 5 of 22 to 15 of 22.

under the investigative detention topic, despite its obvious relevance to issues surrounding search incident to arrest and other police powers. A more meaningful discussion of *Charter* applications here and elsewhere in the training, including the limitations courts have placed on police powers, would have reinforced the police's responsibility to execute their law enforcement responsibilities in a manner that did not infringe the fundamental rights and freedoms of citizens.

d. Arrest process

This section of Training Module B reviewed the arrest process to be used during the G20 Summit. The stated purpose of this section was to inform police officers of their specific assigned duties to make and process arrests in a safe and efficient manner during the event. Materials devoted to the arrest process required an average of 25 minutes to complete.⁶² The topics covered in this section included: the prisoner management process for the G20 Summit; the process of prisoner "hand-off" and transport; how the "zone" (e.g. Interdiction Zone or the Outer Zone) in which the arrest took place would affect the arrest process; the coordination of crime scene investigations; and the process for maintaining a memo book.⁶³

The training materials provided a summary of the logistical aspects of the arrest process that had been designed for the G20 Summit and included such issues as handing off prisoners to transport officers and transporting prisoners to the Prisoner Processing Centre.⁶⁴ While there was no specific focus on the grounds or procedure for arrests without an arrest warrant, the materials did articulate a general "threshold" for arrest during the G20 Summit:

Arrest threshold: It is important that discretion, tolerance, and patience be applied with non-violent forms of protest. If there is no violence officers have discretion. Officers must be able to differentiate between violent and non-violent protesters (i.e. Black Block [sic] vs. Civil Disobedience).⁶⁵

The materials are correct to comment that in the exercise of police discretion – whether in the context of crowd management, investigative detention, search, or arrest process – the police officer's conduct must be reasonable in the circumstances and respectful of the right of peaceful assembly.

e. Gate management

The issue of controlling access to various locations throughout Toronto's downtown centre during the G20 Summit was also covered in Training Module B. Specifically, the training materials detailed the access procedure for individuals who wished to gain entry into the Interdiction Zone. Other topics covered under this section included: the rationale behind the Interdiction Zone access policy and procedure; the legal authorities which permitted the police to control access into the

⁶² Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 20.

⁶³ Toronto Police Service, Course Training Standard, "G20 Training Module 'B'", Course Code: LDS006 at 20.

⁶⁴ G-20B Training Module, Section 4: Arrest Process at 1 of 18 to 16 of 18.

⁶⁵ G-20B Training Module, Section 4: Arrest Process at 17 of 18 [emphasis added].

Interdiction Zone for the G20 Summit; the process for searching vehicles; and how police officers should interact with individuals that request access to the Interdiction Zone. The training materials advised that pedestrians, motorists, and passengers would be asked to provide a G20 Summit registration card and photo identification before being permitted entry to the Interdiction Zone. With emphasis on a police officer's responsibility for preserving peace, preventing crime, and protecting life and property, the materials instructed officers to deny access to the Interdiction Zone in any case where a person refused to provide proper identification and to stop and investigate any individual who did not comply with the access protocol.

Reference was also made to whether the conduct of the police in controlling access to the Interdiction Zone constituted a justifiable interference with an individual's liberty. That being said, there was no specific reference to the *Charter* or what examples of police conduct could constitute an infringement of a person's liberty in the context of a police officer's responsibility to secure the Interdiction Zone.

In my view, the training was lacking insofar as it did not include content that would facilitate an understanding of the practical difficulties that police officers could have encountered in managing access to the Interdiction Zone during the G20 Summit or how police officers could overcome some of these challenges while at the same time ensuring the safety and security of both the Summit delegates and the general public.

iii. Ontario provincial statutes training

As discussed above, an online training curriculum was also developed to provide out-of-province officers with an overview of provincial laws that they may have had to enforce during the G20 Summit. Completion of this portion of the online training was mandatory for all police officers from services outside of Ontario and required approximately 1.5 hours to complete.

The course was designed to provide a basic understanding of specific provincial laws. As with the other forms of online training, officers were required to complete a test at the end of each section or topic of the training. The following Ontario statutes were included in the training: the *Highway Traffic Act*, *Liquor License Act*, *Mental Health Act*, *Police Services Act*, *Provincial Offences Act*, *Public Works Protection Act*, and *Trespass to Property Act*. As noted in the OIPRD Report, there were a number of other provincial statutes and regulations that should have been, but were not covered in the training material, including Ontario's *Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act, 2005*.⁶⁶ The absence of any reference to these statutes in the training stands in contrast to the course outline, which highlighted the importance of ensuring that human relations and diversity training is incorporated as an important component of all training provided by the Toronto Police Service.⁶⁷ Approximately 15 minutes was devoted to providing instruction on each of the statutes covered in the training.

⁶⁶ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012), at 261.

⁶⁷ Toronto Police Service, Course Training Standard, G20 Training, "Ontario Provincial Statutes", Course Code LDS007 at 5.

With respect to each of the Ontario statutes discussed in the training materials, police officers were provided with information on basic offences and basic law enforcement options, such as the powers of arrest (with and without a warrant), detention, apprehension, and search and seizure of individuals and vehicles, as well as the protocols for demanding identification from persons.⁶⁸ The materials stressed the importance of ensuring that out-of-Ontario officers had a well-grounded understanding of the powers, duties, authorizations, and limitations related to the specific Ontario statutes. At the end of the training module, officers were encouraged to “seek out an officer from the Province of Ontario” for further information beyond the scope of the training module. Given the differences, subtle or evident, between the Ontario laws and other provincial legislation, it is a matter of concern that this was the only training that out-of-Ontario officers were required to take before being deployed to police the G20 Summit and exercise police powers prescribed under these statutes.

iv. Non-POU face-to-face training

A single day of face-to-face training at the Toronto Police College was mandatory for all police officers assigned to front-line policing duties (e.g. patrolling the streets and attending incidents) during the G20 Summit, as well as for Court Services officers assigned to wagon duty. Members assigned to the Unified Command Centre, Greater Toronto Area Command Centre, MICC, and Emergency Operation Centre, as well as Public Safety Officers (who had G20 crowd management training), Emergency Task Officers, and Mounted Unit officers were exempt from this training.

The face-to-face training incorporated and reinforced the cognitive skills reviewed in Training Modules A and B and provided practical application experience regarding the use of newly issued equipment in conjunction with use of force options. The training was comprised of lectures and PowerPoint presentations, informal discussions, an equipment check, and practical exercises which would be evaluated and assessed by an instructor. It was intended to provide officers with the knowledge and skills to make sound judgment decisions when policing the G20. The face-to-face training required an average of 10 hours to complete.⁶⁹ Officers were required to attend the training in uniform, fully equipped with all equipment (e.g. handcuffs, issued firearm, ammunition, issued TASER, gas mask, etc.).⁷⁰

Training was provided on issues that might affect public and officer safety, including a review of crowd management protocols; operational considerations; gas mask and helmet use; gas exposure and decontamination; defensive tactics; firearm handling; and front-line tactics.⁷¹ The operational considerations section of the face-to-face training reinforced some of the instructions provided during the online training. This included the G20 arrest and prisoner management process, which

⁶⁸ Advisory Committee Meeting Results (20 April 2010) at 3.

⁶⁹ Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG at 7.

⁷⁰ Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG, Course Calendar Description.

⁷¹ Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG at 7.

contained a brief discussion on mass arrests and the purpose of the LRAD and its capabilities (e.g. use of force warnings). Reference was also made to relevant Toronto Police Service procedures, Ontario-specific statutes, the *Charter*, the *Criminal Code*, case law, and various instruction manuals and protocols. The face-to-face training presented a fairly comprehensive instruction on these subjects.

Instruction on crowd management formed a significant part of the academic component of the face-to-face training, the purpose of which was to reinforce the powers, duties, and responsibilities of officers assigned to the G20 Summit. Materials devoted to crowd management required an average of 60 minutes to complete.⁷² Specific topics that were canvassed included: the characteristics of crowds in a protest situation; recognizing risk factors in crowds; actions of a disorderly crowd; the importance of professionalism in crowd dynamics; duties of a police officer; the justifiable use of police powers in relation to the *Charter* and the ancillary powers doctrine; and search and seizure.⁷³

The face-to-face training supplemented earlier training about crowd management techniques and police conduct in protest situations. Generally speaking, the new content provided an explanation of why police officers should maintain polite interactions with the public and “avoid arguments” with protestors.⁷⁴ Specific reference was made to warrantless searches being unreasonable, obligations under the *Charter* and the *Criminal Code*, as well as the crowd management “code of conduct,” which emphasized showing respect for the public, providing guidance before arrest, avoiding poor language and arguments, and maintaining polite responses. The remainder of the training reinforced content about crowd escalation and baiting tactics.⁷⁵ Unlike the online training, the PowerPoint materials developed for the face-to-face training identified potential situations that officers may encounter during the event, the relevant sections of the *Criminal Code* that could be triggered by these situations, and the appropriate response to be taken by police officers in accordance with the law.

For example, the materials covered what should be done in a situation where a police officer becomes concerned that a water bottle contains a dangerous substance. The materials instructed officers that based on concern alone, a search and seizure would not be reasonable or acceptable, but with reasonable grounds and intelligence, a seizure and arrest may be necessary, reasonable, and appropriate.⁷⁶ In addition, officers were informed of some of the factors that may indicate risk in this situation and strategies for dealing with that risk. The training provided practical instruction, rooted in examples of situations that could reasonably arise during the G20 Summit. The materials also included a discussion of the *Charter* rights to be free from arbitrary detention and unreasonable search and seizure in the context of these situations.

⁷² Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG at 21.

⁷³ Toronto Police Service, Course Training Standard, “G20 Face-to-Face Front Line Officer Training”, Course Code: G20TRG at 21.

⁷⁴ Toronto Police Service Training, G20 (June 2010) at 46-54.

⁷⁵ Toronto Police Service Training, G20 (June 2010) at 57-58.

⁷⁶ “Toronto Police Service Training G20” PowerPoint Presentation (June 2010) at slides 20-23.

v. POU face-to-face training

In total, there were 1,397 POU officers deployed for the G20 Summit, of which 447 were from external services.⁷⁷ As I mentioned earlier in this chapter, a two day mass face-to-face training session was held for all POU teams, the focus of which was to practice specific skills for the G20 Summit, to assist POU teams in understanding the scope of the event, as well as to provide the ability to work in conjunction with other POU teams. A total of 20 hours (10 hours per day) was devoted to this training session.⁷⁸ Emergency Management Service personnel also participated in the training.

The training was broken down into a series of five stations with a particular focus on POU formations, LRAD awareness and barricade awareness training, and “passive and active arrest.”⁷⁹ Each of the stations ran for approximately 1.5 hours. The passive and active arrest station involved various scenarios, including an active scenario with simulated groups of non-violent and violent protestors. The purpose of this training was to equip POU teams with the tools necessary to execute proper tactical formations and arrests, react appropriately to gas deployment and less lethal munitions, and take steps to quickly restore public safety. Chief Blair advised the Review that this “on ground” training included a review of some of the differences in the policies and procedures of the POU teams from different police services.⁸⁰

To assist with the face-to-face POU training, a PowerPoint presentation on public order incidents was developed by an Assistant Crown Attorney. It covered a number of relevant topics, including:

- use of force;
- non-arrest powers (e.g. investigative detention);
- powers of arrest under the *Criminal Code*, the *Provincial Offences Act*, and other relevant statutes;
- crowd dispersal techniques;
- common criminal offences (e.g. participating in an unlawful assembly or riot);
- the right to protest and its limitations;
- specific *Charter* rights and freedoms likely engaged during mass protest demonstrations (e.g. freedom of expression, freedom of peaceful assembly, right to counsel, etc.); and
- search and seizure powers and limitations.

⁷⁷ Toronto Police Service Answers to Undertakings, Nos. 25 and 26 (21 February 2012).

⁷⁸ Mass Training – G20 Preparation Notes.

⁷⁹ Mass Training – G20 Preparation Notes at 2.

⁸⁰ Toronto Police Service Answers to Undertakings, No. 23 (21 February 2012).

Each of these topics included a discussion of the basic principles, relevant statutory provisions, common law tests, factors, and issues to consider in exercising police powers, with specific examples based upon the relevant case law. This PowerPoint presentation was a fairly exhaustive review of the legal authorities that could be engaged in the policing of the G20 Summit.

Based on the POU debriefing that occurred after the G20 Summit, the general consensus among the POU teams was that the training provided was insufficient. As one officer explained, the training was not “intense enough.”⁸¹ There were, however, differing opinions on whether the training should have been intensified and based on more real-life scenarios or slowed down to “develop...tailored and measured responses according to crowd characteristics.”⁸²

E. STYLE AND TONE

Policing a large-scale international event like the G20 Summit gives rise to unique security challenges. Training materials should consider the interests of multiple police forces, diverse protest groups, and other stakeholders in an effort to facilitate an appropriate security response. In this regard, training should avoid stereotypical or unfair representations of protesters.

Many of the images used in the G20 Summit training materials depicted rioting crowds and violent protestors in dark, “Black Bloc”-style clothing.⁸³ Representations of this type greatly outnumbered representations of peaceful assemblies. Similarly, the term “anarchists” was repeatedly used during the training to describe G20 protestors.⁸⁴ The use of such illustrations and language may have carried with it an implied message that all protestors at the G20 Summit were “anarchists,” capable of “Black-Bloc”-style tactics such as vandalism, rioting, and violent resistance of police authority. Further, these illustrations considered alongside other crude representations of police interactions with the public, may have suggested to officers that more aggressive crowd control measures were the appropriate default police response to security events during the G20 Summit. This impression was also reflected in the failure to provide adequate coverage of the human rights issues raised by demonstrations in the training materials.

In my view, while the training was correct to identify “Black-Bloc”-style protestors as those persons raising some of the most serious G20 Summit policing concerns, the combined effect of the training’s style and tone undermined what should have been its primary objective: to properly instruct officers on *all* aspects of safe and responsible policing at the event. Overall, the training should have represented the appearance and objectives of G20 Summit protestors in a more balanced manner, certainly equipping officers for the “worst case” scenarios, but adequately addressing the many other scenarios they may face.

⁸¹ Toronto G20 Summit (17-29 June 2010) Public Order Unit Debrief at 5.

⁸² Toronto G20 Summit (17-29 June 2010) Public Order Unit Debrief at 5-6.

⁸³ See, e.g., G-20B Training Module, Section 2: Investigative Detention at 4 of 29 and 19 of 29; Toronto Police Service Training, G20 (June 2010) at 16-17.

⁸⁴ See, e.g., Toronto Police Service Training, G20 (June 2010) at 16.

F. THE BOARD'S ROLE IN THE DEVELOPMENT OF THE TORONTO POLICE SERVICE'S TRAINING PLAN

As discussed in *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, the Board never received any information about the scope or content of training delivered to any officers, including officers from external police services. The Board was not even briefed on the general topics of training or methods proposed to deliver the training, nor did the Board seek to obtain this information. The Board should have been given more particular information about how training would be provided, to whom it would be provided, the amount of time devoted to the training, and the general nature of that training. In addition, as I have said, the Board should have taken a more active role in obtaining specific information about the training that would be delivered and developed a level of confidence in its adequacy.

The Board's absence in relation to these training matters is of concern insofar as it may have contributed to a disconnect between training materials developed by the Toronto Police Service and the Board's policies on various policing matters. As discussed above, the content of training for the G20 Summit covered such topics as a police officer's obligations under the *Charter* and *Criminal Code*; demanding identification from individuals; powers to search or arrest individuals without a warrant; and the use of force on individuals participating in a demonstration. Some of these topics were the subject of existing Board policies when G20 Summit training was being developed.⁸⁵ Yet there was no coordination or consultation between the Board and the Toronto Police Service with respect to how the training reflected these policies. Such coordination might have alerted either the Board or the Toronto Police Service to specific gaps or errors in the materials and Board policies that could be addressed before the training was administered.

In addition, more open communication between the Board and the Toronto Police Service may have led the Board to address gaps in its existing policies. For example, the Board might have been alerted to aspects of G20 Summit policing which were emphasized in training, but about which its existing policies were outdated, insufficient, non-existent, or otherwise needed revision. Additionally, greater coordination might have highlighted areas of policing, such as crowd control and the power to arrest for "breach of the peace," for which a new Board policy may have been useful.

⁸⁵ Board Policy LE-011 – Search of Persons (approved 23 November 2000, and reviewed October 2003); Board Policy LE-005 – Arrest (approved 28 September 2000, and reviewed October 2003); Board Policy ER-001 – Preliminary Perimeter Control & Containment (approved 29 June 2000, and reviewed November 2003); and Board Policy A1-012 – Use of Force (approved 22 March 2007, and amended 18 June 2009).

Recommendation No. 26:**The Toronto Police Service and the Board should work together to develop the training materials for a major event**

In accordance with Recommendation No. 21 in *Chapter 6 – Toronto Police Services Board's Knowledge of G20 Summit Matters*, the Toronto Police Service should share information with the Board on the training being developed for officers participating in a major event. This information should include the topics to be covered, an overview of the general content, and any potential issues or concerns raised regarding the sufficiency of the training materials. The Board should examine the information provided with a view to maximizing the overall effectiveness of the training materials and ensuring that the materials properly reflect existing Board policies. This examination should include an assessment of the methods of delivery of the training (e.g. E-learning, practical exercises, etc).

G. CONCLUSION

In this chapter, I have reviewed the structure, content, and methodology of police training administered by the Toronto Police Service in advance of the G20 Summit. I have also examined challenges faced during the training development process and provided my views regarding the sufficiency of the instruction on several key aspects of policing such a large-scale event. I have highlighted areas where the training succeeded in meeting its objectives, as well as areas where the training fell short. My purpose is to assist in the design and implementation of training programs for similar events of this scale in the future.

The combination of online modules and face-to-face instruction was a necessary method for training G20 Summit officers given the timelines and use of officers from external police services across Canada. This method was not, however, the ideal model for training, which instead would have relied more heavily on in-person classroom instruction that blended theoretical content with practical skills testing. In response to identified concerns about an over-reliance on E-learning, Chief Blair suggested that possible deficiencies in training were the by-product of short preparation and planning time. While I recognize that such time pressure, largely outside the Toronto Police Service's control, clearly influenced the development and delivery of training at all stages of the process, this did not excuse the Toronto Police Service from addressing the effectiveness of E-learning and other important issues about the sufficiency of the materials when these concerns were first raised. There should have been greater consultation between the Toronto Police Service and other relevant stakeholders, especially the Board, about best practices in training during the months leading up to the G20 Summit. This would have improved the materials and helped ensure that the instruction was accurate, comprehensive, and appropriate, as well as consistent, in style, tone, and delivery.

The substance of the training administered to officers covered a broad range of topics related to policing the G20 Summit. I have commended the Toronto Police Service for its discussion of police powers and the limitations of police powers throughout the training, as well as for its substantial focus on crowd dynamics and management techniques during demonstrations. These materials were clearly presented and highly relevant to maximizing safety in mass protest

situations. However, this training would have been improved by more practical instruction, working through situational examples that had been encountered at past G8 and G20 Summits. Further, there should have been a greater emphasis in training on the police officers' responsibility to protect and facilitate the public's exercise of their fundamental rights and freedoms under the *Charter*. By not supplementing the instruction on disorderly crowds with coverage of such rights as peaceful assembly, the training presented an unbalanced view of protestors and may not have equipped officers with the full range of skills they needed to help foster peaceful protest.

CHAPTER EIGHT: POLICIES AND PROCEDURES CONCERNING CROWD CONTROL AND MASS DEMONSTRATIONS

A. INTRODUCTION

Terms of Reference 5(a) and 6(a) read:

5. (a) Did the Board have policies in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they.

6. (a) Did the Toronto Police Service have procedures in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they and did the Toronto Police Service monitor compliance with them.

B. CROWD CONTROL AT MASS DEMONSTRATIONS

i. Toronto Police Services Board policies

There is no Toronto Police Services Board (“Board”) policy that directly bears on “crowd control at mass demonstrations.” There are, however, three Board policies that have some relation to it. They are set out in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service* under the heading “Board Policies made under [*Adequacy and Effectiveness of Police Services*] O. Reg. 3/99 and related Ministry Guideline Policies.” They are entitled “Arrest,” “Public Order Units,” and “Preliminary Perimeter Control and Containment.” I comment on them in Chapter 1 in their own terms – that is, as fulfilling the general purposes of a policy statement. While their provisions may relate to some elements or aspects of crowd control at mass demonstrations, it cannot be said that the Board had a policy that squarely and comprehensively addressed this subject. I shall return to the lack of a more general Board policy on crowd control at the conclusion of my consideration of the bearing of Toronto Police Service procedures on crowd control at mass demonstrations.

ii. Toronto Police Service procedures

The Toronto Police Service did have procedures that bear on this question, which I have reviewed. By virtue of an undertaking that this Review has given to the Toronto Police Service “information that is produced to the Review which describes [Toronto Police Service] procedures as found in the [Toronto Police Service] Procedure Manuals and G20 Officers Handbook, both with respect to the G20 Summit and more generally” is “Confidential Information” that will not be disclosed or published. The undertaking does not preclude the Review from making reference to the existence of “Confidential Information” or identifying the general nature of “Confidential Information” in its

final report. This undertaking limits the scope of what I can say on the subject, but, having regard to the purpose of this Term of Reference, not seriously.

I refer, first, to the Toronto Police Service Policy and Procedure 11-04 dated September 10, 2009, specifically titled “Protests and Demonstrations” under the general title “Crowd Control.” It is three pages in length and includes a “Rationale” that states that the purpose of the Procedure is to help officers policing protests and demonstrations to do so while maintaining a role of complete neutrality.

Under the heading of “Procedure” officers are instructed that they should not become involved in protests and demonstrations unless there is a breach of the peace or a violation of the law or a strong suspicion that such a breach or violation may occur.

This document then sets out the steps that should be taken by the “Police Officer” upon receiving information that a protest or demonstration is in progress or is about to take place. Following this it sets forth the steps to be taken by the “Supervisory Officer.” Finally, it sets forth the responsibilities of the “Officer in Charge.”

This document makes it reasonably clear that it is intended to relate to a protest or demonstration of a much smaller order than those which took place during the G20 Summit in June 2010.

Another Toronto Police Service Policy and Procedure under the general heading “Crowd Control” is 11-01, dated February 16, 2010 and titled “Public Safety and Emergency Management Response.” It is seven pages in length. Under “Rationale” it refers to a particular group trained to proactively manage lawful and unlawful assemblies. It then states certain police steps that could be taken, one of which could be likened to “kettling.” It provides that Public Safety personnel will effectively contain, isolate, and disperse the individuals creating the disorder. Under “Procedure” it first deals with “Planned Events.”

It would appear that this particular procedure, as well, is meant to apply to events of a much smaller magnitude than took place at the G20 Summit in June 2010.

The next Toronto Police Service procedure to which I shall refer, 15-01, is under the heading of “Use of Force and Equipment.” It was issued in September, 2009 and titled “Use of Force.” Under the heading “Rationale” it sets out well-established principles respecting the police service placing the highest value on the protection of life and safety with a higher regard for human life over protection of property. It also refers to the Ontario Use of Force Model as an aid to promoting continuous critical assessment and evaluation of every situation.

This procedure, of course, is not restricted to the use of force at mass demonstrations, but its principles would have been relevant and applicable to much of the police activity during the G20 Summit. In this document there are statements respecting “Procedure” and “Training” that are of particular relevance. They refer to (1) the *Criminal Code*, R.S.C. 1985, c. C-46 provisions on the grounds justifying the use of force and the existence of criminal and civil liability for any unjustified use of force, and (2) the requirements in *Equipment and Use of Force*, R.R.O. 1990, Reg. 926 respecting the receipt of stipulated training courses as a necessary condition of using force on another person.

There are other procedures that are relevant to crowd control at mass demonstrations, such as the deployment of the Mounted Section, but the foregoing, particularly that titled “Crowd Control Protests and Demonstrations,” are the most relevant ones.

The Review team asked Chief Blair about the training that deployed officers received in the procedures before the G20 Summit. He responded that he had “every expectation that they would be integrated into [the] training material.”¹ In this regard we have been furnished with a copy of the Toronto Police Service Public Order Unit document “Use of Force Issues in Crowds.” The following excerpts are relevant to the Terms of Reference under consideration:

USE OF FORCE ISSUES IN CROWDS

Advantages of GAF (Gradual Application of Force)

Allows for Controlled and Measured response.

Able to articulate use was Reasonable and Measureable

Liability

Protects against civil and criminal liability

Professional Conduct and Image

Enhances public perception of the police.

GRADUAL APPLICATION OF FORCE

During disorder, why should force be applied gradually?

To avoid challenge

An unnecessary display of force at an event not requiring force may cause the crowd to perceive the police as a challenge and therefore react violently.

Enhance public image of the police

Considerations and Degree of Force in Crowd Situations

ACTIVE DISPERSAL

Before using an active dispersal technique, it is paramount to consider ...

Dispersal Routes

¹ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 55-56.

Always pre-plan dispersal routes.

Always ensure that there is enough area for the crowd to disperse.

Always leave the crowd “an out.”

A trapped crowd can lead to panic.

Survival may escalate crowd response.

C. MONITORING COMPLIANCE WITH POLICE SERVICE PROCEDURES ON CROWD CONTROL

I turn now to the third question in Term of Reference 6(a), “... and did the Toronto Police Service monitor compliance with” the police procedures dealing with crowd control at mass demonstrations.

Chief Blair informed the Review team that the police service “always monitors compliance” with procedures:

One of the roles of supervisors, we have supervisors in both sergeants and staff sergeants and inspectors and operational commanders out on the ground who are responsible for monitoring compliance of their personnel with our procedures and orders, so that was taking place, it's a constant. And that's one of the defined responsibilities of that supervisory personnel. We ensured in this case that we did have appropriate supervision out on the street with our people, ensuring that those procedures were adhered to. And as well, right up through the chain of command, and so, the authorities that by our procedures that are given to those on the ground were being reported up through to the Incident Command Centre.²

He was then asked what was required to happen if a supervisor on the ground sees an officer not complying with an existing procedure. He replied:

They're to intervene, ensure compliance, and if there's a disciplinary issue to deal with [it] document it and to ensure that it's dealt with.³

Chief Blair said there were a number of complaints received by the Office of the Independent Police Review Director (“OIPRD”), and by the Toronto Police Service that were referred to the OIPRD, with respect to operational decisions made and deployment. As of the time of our consultation with the Chief, the OIPRD had not released the outcome of its inquiries. The Chief further said he was not aware of any complaint related to the allegation that police procedures were not followed.

² Review's Interview with Chief William Blair (18 November 2011, Toronto) at 58.

³ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 59.

The OIPRD *G20 System Review Report* has now been released.⁴ It included the following on the matter of crowd control at Queen's Park on June 26, with a tangential reference to the absence of monitoring:

Without question, the attitude of senior officers toward protesters and toward the rules of their own services influences the behaviour of police on the ground and sets the tone for the police response. It allows individual officers, who find out they can act with impunity, to use excessive force. At Queen's Park, police were seen to be treating all demonstrators as threats to public safety. For the most part, this perception was accurate. In a statement to the OIPRD, Incident Commander Superintendent Fenton continually referred to crowds as 'protesters/terrorists.'

It is fair to say that the level of force used in controlling the crowds and making arrests at Queen's Park was higher than anything the general public in Toronto had seen to this point. In some cases, there was excessive use of force.⁵

I do not see fit to pursue this particular question further because I think it is clear that the cases of ineffective policing and excessive use of force during the G20 Summit were not significantly the result of non-compliance with police service procedures, but rather of a host of other factors, beginning with inadequate preparation time.

In a democracy where protest is a common form of expression, crowd control at mass demonstrations is a policing function of increasing importance. To provide the Toronto Police Service with guidance in this area, it would be valuable for the Board, working with the Ontario Association of Police Service Boards and other bodies that would be of assistance, to prepare a policy on crowd control at major events, including those of the magnitude of the G20 Summit.

Without limiting the nature and scope of the subjects to be covered in the policy I suggest that they should include: necessary preparation times for adequate planning; command structures; the organization and dissemination of intelligence; incident management systems; the adaptation, if necessary, of existing services procedures for use during the contemplated event; and training.⁶

⁴ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012).

⁵ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 119.

⁶ For current writing, judicial and non-judicial, reference may be made to *Case of Austin and Others v. The United Kingdom*, (*The European Court of Human Rights* 15 March 2012); *Austin and Another v. Metropolitan Police Commissioner*, [2009] 3 All E.R. 455 (H.L.); *The Queen (on the application of Hannah McClure and Joshua Moos) v. The Commissioner of Police of the Metropolitan Police*, [2012] EWCA Civ 12; W. Wesley Pue and Robert Diab, "The Gap in Canadian Police Powers: Canada Needs 'Public Order Policing' Legislation" 28 *Windsor Review of Legal and Social Issues* 87 (2010); Willem de Lint, "Public Order Policing in Canada: An Analysis of Operations in Recent High Stakes Events" (2004), available: http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/deLint.pdf; Willem de Lint, "Public Order Policing: A Tough Act to Follow" 33:4 *International Journal of the Sociology of Law* 179 (2005); and the Toronto Police Service, *G20 Summit After-Action Review* (June 2011).

**Recommendation No. 27: Board to create a comprehensive policy on crowd control
at mass demonstrations**

The Board, with the assistance of the Ontario Association of Police Services Boards and other bodies that would be of assistance, should prepare a comprehensive policy on crowd control at mass demonstrations. This policy should address the following subject matters, among others: necessary preparation times for adequate planning; command structures; the organization and dissemination of intelligence; incident management systems; the adaptation, if necessary, of existing services procedures for use during the contemplated event; and training.

CHAPTER NINE: TORONTO POLICE SERVICES BOARD POLICIES AND TORONTO POLICE SERVICE PROCEDURES ON THE WEARING OF POLICE NAME BADGES

A. INTRODUCTION

Terms of Reference 5(b), 6(b), and 10 read:

5. (b) Did the Board have policies in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they.

6. (b) Did the Toronto Police Service have procedures in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they and did the Toronto Police Service monitor compliance with them.

10. Did police officers with the Toronto Police Service remove or cover their name badges or police badge numbers during the policing of the G20 contrary to Toronto Police Service and Board policy.

B. THE WEARING OF NAME BADGES

i. Board policy on name badges

With respect to Term of Reference 5(b), the Toronto Police Services Board (“Board”) had a policy in place before, during, and after the G20 Summit requiring police officers to wear name badges. The expression of its position is set forth in minutes of a public meeting of the Board held on September 6, 2005. The subject matter of the meeting was the consideration of a recommendation from Chief Blair that read: “It is recommended that: the Board approve the implementation of police identification on uniforms in 2005.”¹

The information furnished by Chief Blair to the Board, set forth in the minutes, related entirely to the process of making the name badges and the total approximate cost (\$142,000). The minutes show that at the conclusion of the meeting’s consideration of this matter the Board approved the recommendation set forth above.

¹ Toronto Police Services Board Minutes (6 September 2005) (Public Meeting), Item #P289, “Police Identification on Uniforms” at 2.

The Board has furnished us with one of its written policies entitled “Police Uniforms” that simply provides:

It is the policy of the Toronto Police Services Board with respect to police uniforms that the Chief of Police shall develop procedures on the provision and use of a standardized uniform by the police service’s uniformed officers.²

It has also furnished us with a further policy that was made in 2007 entitled “Uniforms, Working Attire and Equipment”³ that begins with the same policy statement as the one quoted above.

Neither of these statements expressly refers to the wearing of name badges.

Summing up, the Board’s policy on name badges is recorded solely in the minutes of a Board meeting that appeared to be concerned only with the matter of the cost of the name badges. It is a very important policy which, as I shall note at the end of this chapter, is intended to assist in holding police officers to account for their conduct. This policy should be expressly stated and included in the catalogue of Board policies.

Recommendation No. 28: Board policy on the wearing of name badges and/or police badge numbers

The Board should express its policy on the wearing of name badges and/or police badge numbers in its standard policy format and include it in its catalogue of policies. The policy should require the chief of police to report to the Board on a regular basis concerning incidents of non-compliance with the policy.

C. POLICIES AND PROCEDURES ON THE WEARING OF POLICE NAME BADGES

I turn now to Terms of Reference 6(b) which asks whether the Toronto Police Service had procedures in place requiring police officers to wear name badges while on duty and, if so, what were they and did the Toronto Police Service monitor compliance with them.

The answer to the first part of this question is that at all relevant times the Toronto Police Service did have such a procedure in place. I refer to the Toronto Police Service Procedures 15-16 – Appendix H, entitled “Wearing of Name Badges,” which was issued in October of 2008, replacing an earlier version of the procedure. It provides:

All Uniformed Functions

² Board Policy AI-010 – Police Uniforms (Reviewed October 2003).

³ Board Policy – Uniforms, Working Attire and Equipment (2007).

Name badges shall be worn at all times on the following items as described below:

Velcro or Brass Name Badge

Multi-Purpose Patrol Jacket

• • • •

[Other kinds of police uniforms are listed.]

• • • •

When in uniform, name badges shall be worn on the above-mentioned articles of clothing:

- in a horizontal and level position with the Canadian flag positioned to the right side of the body;
- clearly displayed and visible to the public; and
- on the outermost garment.

Rainwear does not require the wearing of name badges.⁴

There are other Toronto Police Service Procedures that could be referred to as supporting the one above relating to the wearing of name badges. For example, the Toronto Police Service governance *Standards of Conduct*, version 2009.06.11 provides, in part:

While on duty, members employed in the uniformed capacity shall be neat and clean in appearance and *dressed in the appropriate prescribed uniform worn in the prescribed manner*.⁵

Chief Blair informed the Review that the “other 22 police services had different requirements regarding the identification of officers and our regulations and procedures did not apply.”⁶ This in itself raises a different issue, also of a serious nature. The standard memorandum of agreement between the Board and external police forces assisting the Toronto Police Service during the G20 includes these provisions.

4.3 Deployed personnel shall be subject to the *Ontario Police Services Act* and [Toronto Police Services] policy and operational guidelines, wherever they do not conflict with legislation and procedures governing the deployed personnel.

4.7 Deployed personnel will not at any time during deployment be employees or servants of the [Toronto Police Service]. Public complaints and disciplinary matters

⁴ Toronto Police Service Procedure 15-16, Appendix H, “Wearing of Name Badges” (9 October 2008).

⁵ Toronto Police Service, Governance *Standards of Conduct* (11 June 2009) [emphasis added].

⁶ Review’s Interview with Chief William Blair (18 November, 2011 at Toronto) at 79. (The Review’s information is that there were 28 other police services).

involving deployed personnel will be processed in the usual course pursuant to the legislation application to them. ...

In *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*, I discussed the problem raised by a memorandum of understanding between the Board and another police force that contained the provisions worded the same way. I said:

In my view, if the matter at issue was the subject of Board policy, it was obviously important that it be adhered to by all officers policing in the Outer Zone. The Board should not have agreed to a conflict equals no-discipline rule – the effect of which is that the officers policing the G20 Summit could act contrary to Board policy without consequence. These issues should have been examined closely by the Board before the [Memoranda of Understanding] were approved and executed. Rather, a review of the information relevant to this matter indicates that the Board allowed itself to become a rubber stamp to approve and sign agreements without consideration for the oversight issues they raised.

D. MONITORING POLICE SERVICE PROCEDURES ON WEARING NAME BADGES

I turn now to the monitoring of these procedures. There are several Toronto Police Service Governance Standards of Conduct that could relate to the monitoring of the wearing of name badges. I refer to *Standards of Conduct* 1.3, “Contravention of Service or Legislative Governance and/or Misconduct.”⁷ It requires members to report to a supervisor, a Unit Chief Commander or the Unit Commander of Professional Standards a failure of a member of the police service “to follow a mandatory course of action prescribed in any Service Governance.”⁸ I also refer to a further standard of conduct with respect to duties of staff sergeants and detective sergeants:

Staff sergeants and detective sergeants shall check the condition of members as they report on and off duty.⁹

Chief Blair informed this Review that “the issue of not wearing name badges was brought to our attention as a result of a number of complaints that were registered shortly thereafter.”¹⁰ I infer from this that the non-wearing of name badges was not brought to the Toronto Police Service’s attention through the monitoring system to which I have referred.

The Report of the Office of the Independent Review Director bears on the subject of monitoring. It says:

⁷ Toronto Police Service, *Governance Standards of Conduct*, 1.3, “Contravention of Service or Legislative Governance and/or Misconduct” (11 June 2009).

⁸ Toronto Police Service, *Governance Standards of Conduct*, 1.3, “Contravention of Service or Legislative Governance and/or Misconduct” (11 June 2009).

⁹ Toronto Police Service, *Governance Standards of Conduct*, Part III – Duties and General Responsibilities, 2.8.1, “Staff Sergeants and Detective Sergeants – Conditions and Presence of Members” (11 June 2009).

¹⁰ Review’s Interview with Chief William Blair (18 November, 2011 at Toronto) at 68.

During the G20 weekend and especially at Queen's Park, a large number of police officers removed their name badges. For the Toronto Police Service, this action was against its rules. ... [T]he fact that officers had taken off or covered over their name badges could not have gone unnoticed by senior officers on the ground. This means that senior officers chose to ignore this violation of the rules or tacitly approved of the behaviour.¹¹

The matter of actual compliance with the procedures on name badges is dealt in what follows immediately below.

E. DID TORONTO POLICE SERVICE OFFICERS REMOVE OR COVER THEIR NAME BADGES DURING THE POLICING OF THE G20 SUMMIT?

This, in abbreviated form, is the question in paragraph 10 in the Terms of Reference, which is set forth at the beginning of this chapter.

The answer is in the affirmative. Following the G20 Summit there were 13 public complaints that officers were not wearing their name badges. Chief Blair directed Professional Standards to investigate to determine the full extent of the non-compliance.

The net result of the investigation was furnished to us in the form of an answer to an undertaking given in the course of our consultation with the Chief, as follows:

The [Toronto Police Service] conducted an internal investigation which identified a possible 133 [Toronto Police Service] officers who had not worn identifiers (name tag and epaulettes) in breach of [Toronto Police Service] procedures. Of the possible 133 breaches identified, 66 were substantiated (8 of those were for not wearing epaulettes only) and led to a penalty of a loss of one 8 hour day of pay, 53 were substantiated (2 of those were for not wearing epaulettes only) and led to a penalty of a loss of two 8 hour days of pay and 14 were found to be unsubstantiated and no penalty was assessed.¹²

I have not been asked by the Terms of Reference to express an opinion on the penalties imposed. It is, however, appropriate for me to observe that the intentional non-wearing of a name badge by an officer carrying out his or her duties is an extremely serious offence. The legal powers conferred on police officers to protect the public and enforce the law carry with them the potential of causing serious harm to members of the public. These powers are held in trust by each police officer to be exercised in accordance with the law. It follows that police officers must, as individuals, be fully accountable to the public for their conduct. In the light of this, it is a fundamental breach of duty for police officers to remove their name badges so that they may exercise their powers with intentional anonymity. The inevitable effect of such conduct is to

¹¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 119.

¹² Toronto Police Service Answers to Undertakings, No. 35 (28 May 2012).

undermine the public's trust in the police force which, as I noted in *Chapter 2 – Civilian Oversight in Policing*, is essential to the provision of effective police services.¹³

¹³ At one of this Review's public hearings one of the presenters, Tommy Taylor, included the following in his submission: "My fiancée and I were arrested at the Toronto G20 Summit ... We had broken no law, we were simply on a sidewalk in Toronto ... I witnessed abusive and disgusting behaviour from Toronto officers, many without name badges ... There is only one reason – you remove your name tag so no one knows when you do something. This civilian oversight must hold police leadership to account publicly ... Please help me feel safe in this city again." (Public Hearing, Toronto (1 June 2011) at 9 and 11).

CHAPTER TEN: THE *PUBLIC WORKS PROTECTION ACT* AND ONTARIO REGULATION 233/10

A. INTRODUCTION

Three weeks before the G20 Summit began, the Lieutenant Governor in Council made Ontario Regulation 233/10 (“O. Reg. 233/10”) under the *Public Works Protection Act*, R.S.O. 1990, c. P-55 6(1)(b) (“*PWPA*”), which designated parts of the area within the Interdiction Zone as “public works” under the *PWPA*.¹ That designation provided police officers with additional powers to search and arrest without warrant and to refuse entry to persons wishing to enter the Interdiction Zone. I describe these powers more fully later in this chapter.

In this chapter, I consider the Terms of Reference which concern the *PWPA*. The relevant paragraphs read:

3. With respect to the following matters, a review of the information that the Toronto Police Services Board was given, if any, and the role, if any, the Board played in:

(ii) Considering and approving any request of the Ontario government by the Toronto Police Service for additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10.

(iii) Erroneously communicating to the public or in failing to correct an erroneous communication to the public by the Toronto Police Service that Regulation 233/10 applied to a five-meter zone outside the security fence.

7. (a) What role, if any, did the Toronto Police Service play in requesting additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10.

(b) What role, if any, did the Toronto Police Service play in erroneously communicating to the public or in failing to correct an erroneous communication to the public that the additional legal powers contained in Regulation 233/10 applied to a five-meter zone outside the security fence.

The making and legal effect of O. Reg. 233/10 has been addressed in three other reports. In December 2010, the Ombudsman of Ontario published a report concerning the Ministry of

¹ The Interdiction Zone was the largest of three concentric security perimeters set up around the Metro Toronto Convention Centre during the G20 Summit: going from the inside out puts the Controlled Access Zone first, followed by the Restricted Access Zone, the Controlled Access Zone and the Interdiction Zone. The Toronto Police Service was responsible for the Interdiction Zone, while the Controlled Access Zone and the Restricted Access Zone was under the authority of the RCMP. See: *Chapter 3 – The Planning and Policing Framework for the G20 Summit* for a detailed description of the three security zones.

Community Safety and Correctional Services' involvement in the passing of O. Reg. 233/10.² The Honourable R. Roy McMurtry was engaged by the Ministry of Community Safety and Correctional Services to conduct a review of the *PWPA* in order to make specific recommendations about the continued operation of the *PWPA*.³ Mr. McMurtry's report was released in April 2011 and recommended that the *PWPA* be repealed and replaced with specific legislation to provide for courthouse and power generation infrastructure security.⁴ The Office of the Independent Police Review Director's *G20 Systemic Review Report* addressed the passing of O. Reg. 233/10 and the events surrounding the Toronto Police Service's communication to the public of an incorrect interpretation of O. Reg. 233/10.⁵

In this chapter I shall focus on the specific questions posed by the Terms of Reference and shall make reference to these reports only where necessary to avoid a duplication of discussion and analysis. This chapter reviews the events leading up to the request to the Government of Ontario to designate the Interdiction Zone as a "public work" under the *PWPA*, the role of the Toronto Police Service in making that request, and the events surrounding the Toronto Police Service's communication of an incorrect interpretation of O. Reg. 233/10 immediately before the G20 Summit began. It also examines what role, if any, the Toronto Police Services Board ("Board") played in those matters.

B. THE LEGAL BASIS FOR THE SECURITY PERIMETER

The planning documents and correspondence I have reviewed make clear that the Integrated Security Unit ("ISU") considered it vital that the Toronto Police Service be able to establish a security perimeter around the Interdiction Zone. An e-mail from the commander of the Toronto Police Service Planning Team to a lawyer in the Legal Department of the City of Toronto described the ISU's objectives as follows:

Having the authority to require any person entering the zone to identify themselves, state their purpose for being there and be able to search without warrant any person entering or attempting to enter or a vehicle in the charge or care and control of such person is very important.

Also having the authority to refuse permission for someone trying to enter the zone and the authority to use force to prevent a breach is also very important.⁶

In particular, the Toronto Police Service and the ISU wanted to ensure that there was a "firm legal basis" on which to establish and enforce a security perimeter.⁷ The concern was that existing

² André Marin, *Caught in the Act* (Ontario: Ombudsman of Ontario, December 2010).

³ Hon. R. McMurtry, *Report of the Review of the Public Works Protection Act* (Ontario: April 2011).

⁴ On 21 February 2012, the Ontario government introduced Bill 34, *The Proposed Security for Courts, Electricity-Generating Facilities And Nuclear Facilities Act*, which is intended to replace the *PWPA*.

⁵ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, May 2012).

⁶ E-mail from Toronto Police Service to City of Toronto Legal Services (16 May 2010).

⁷ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

common law and statutory powers, although probably sufficient, may not have provided the clear legal basis desired.⁸ In the two months leading up to the G20 Summit, lawyers for the ISU members, the City of Toronto and the provincial and federal governments considered two possible sources of legal authority for the establishment of a security perimeter: the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 (“*FMIOA*”) and the *PWPA*.

i. The *Foreign Missions and International Organizations Act*

I review the *FMIOA* in detail in *Chapter 3 - The Planning and Policing Framework for the G20 Summit*. Early in the planning process, the Toronto Police Service Planning Team sought a legal opinion from the City of Toronto Legal Services department concerning the legal bases upon which the Toronto Police Service could potentially rely to establish a security perimeter and enforce an accreditation system. The intent was that persons wishing to access the Interdiction Zone during the G20 Summit because, for example, their home was located within that area, would be subject to prior screening and granted accreditation to use during the G20 Summit.⁹ Legal Services identified two legal bases as potential sources of the new powers the Toronto Police Service was seeking, including the *FMIOA*. The opinion considered (1) the use of police ancillary powers at common law¹⁰ or (2) an arrangement between the federal and provincial governments under s. 10.1(4) of the *FMIOA* (“*FMIOA* arrangement”). The legal opinion also addressed constitutional and privacy considerations. It did not, however, make any reference to the *PWPA*.

The Toronto Police Service was advised that due to the nature of the event and the likelihood of violence, the establishment of a security perimeter and accreditation system was likely justified at common law under the ancillary powers doctrine. The ancillary powers doctrine, however, did not provide a clear legal basis as the exercise of those powers depends upon the risk of a specific identifiable harm at a particular point in time. In other words, the Toronto Police Service was looking for a broader legal basis that could be applied uniformly by all officers. The ancillary powers doctrine was too subjective and situation-specific to satisfy this purpose.

The Toronto Police Service was also advised that a possible answer lay in the federal and provincial governments entering into an *FMIOA* arrangement. As I explained in *Chapter 3 – The Planning and Policing Framework for the G20 Summit*, subsection 10.1(1) of the *FMIOA* designates the Royal Canadian Mounted Police (“RCMP”) as the agency responsible for security at intergovernmental conferences. Subsection 10.1(2) grants the RCMP additional powers to carry out that responsibility “including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances.” Subsection 10.1(4) provides:

⁸ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 86.

⁹ Legal Memorandum from City of Toronto Legal Services to Toronto Police Service re Police Powers to Enforce Interdiction Zone (30 March 2010).

¹⁰ The ancillary powers doctrine is derived from the assumption that the police have certain duties and must have, by implication, certain powers in order to fulfil those duties. The test for the invocation of police ancillary powers at common law was laid down by the English Court of Appeal in *R. v. Waterfield*, [1963] All E.R. 649 (C.A.). The two-part test asks: (1) Are the police acting in the execution of their duties? and (2) In all circumstances, does the police conduct constitute a justifiable interference with individual liberty?

Subject to subsection (1), to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces, the Minister of Public Safety and Emergency Preparedness may, with the approval of the Governor in Council, enter into arrangements with the government of a province concerning the responsibilities of members of the Royal Canadian Mounted Police and members of provincial and municipal police forces with respect to ensuring the security for the proper functioning of a conference referred to in that subsection.¹¹

The issue addressed in the City's legal opinion was whether an *FMIOA* arrangement allowed for the delegation of the powers granted to the RCMP under s. 10.1(2) of the *FMIOA* to a municipal police force. The Toronto Police Service was advised that s. 10.1(4) probably did “not allow for the delegation of any power that may be recognized pursuant to subsection 10.1(2) to provincial and municipal police forces, but rather merely indicates that the police forces of different levels of government can work together through agreement to ensure proper security.”¹² However, the opinion noted that an interpretation suggesting that delegation through an agreement could occur was at least possible.

In his interview with the Review, Chief Blair advised that there were discussions between the lawyers for the various ISU members concerning the use of an *FMIOA* arrangement as a legal basis for the Toronto Police Service to establish a security perimeter around the Interdiction Zone.¹³ The Controlled Access Zone and the Restricted Access Zone were under the control of the RCMP. The legal basis for securing those two zones was s. 10.1(2) of the *FMIOA*. The issue under discussion was whether those powers could be delegated to the Toronto Police Service for the purposes of securing the Interdiction Zone.

The Toronto Police Service's position was that an *FMIOA* arrangement could amount to a possible statutory source of police power for the accreditation and perimeter control system, which the Toronto Police Service sought to implement. In April 2010, it appeared that the RCMP also considered an *FMIOA* arrangement relating to the Toronto Police Service as “one that could potentially help us.”¹⁴

On May 7, 2010, the Province of Ontario wrote to the Government of Canada, and stated that, in its opinion, “the provision of security at [the G8 and G20 Summits] would be enhanced by the existence of an agreement pursuant to subsection 10.1(4)” of the *FMIOA*.¹⁵ The Province of Ontario noted that officials from the provincial and federal governments were “currently discussing the proposed scope and terms of the agreement.”¹⁶

¹¹ *FMIOA*, s. 10.1(4) [emphasis added].

¹² Legal Memorandum from City of Toronto Legal Services to Toronto Police Service re Police Powers to Enforce Interdiction Zone (30 March 2010) [emphasis added].

¹³ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 5.

¹⁴ E-mail from RCMP to Ontario Provincial Police and Toronto Police Service (17 April 2010).

¹⁵ Letter from Province of Ontario to the Government of Canada (7 May 2010).

¹⁶ Letter from Province of Ontario to the Government of Canada (7 May 2010).

On June 11, 2010, the Government of Canada responded and stated that “after further assessment and extensive discussions amongst officials and security partners, it was agreed that a separate *FMIOA* arrangement [was] not required for the Summits as *it would not grant further authorities to local police of jurisdiction.*”¹⁷ It added that the “suite of powers and authorities that peace officers [possessed] at common law or by virtue of any other federal or provincial statute were sufficient for the G8 and G20 Summits.”¹⁸ In the Government of Canada’s opinion, s. 10.1(4) only facilitated consultation and cooperation between the RCMP and provincial and municipal police forces and “such consultation and cooperation [was] already well advanced.”¹⁹ The Ontario Provincial Police (“OPP”) also considered additional legal powers unnecessary in order to secure the Interdiction Zone.²⁰

The *PWPA* was being considered before the Government of Canada’s letter was received by the Toronto Police Service on June 11, 2010 and was not resorted to simply because the federal government declined to enter into an *FMIOA* arrangement. As I will explain later in this chapter, Chief Blair made his request under the *PWPA* on May 12, 2010, over three weeks before the Government of Canada ruled out an *FMIOA* arrangement. In fact, Chief Blair’s letter of request regarding the *PWPA* itself makes specific reference to the *FMIOA* as one of the “various legal authorities that the Toronto Police Service and the Integrated Security Unit will rely on to support its establishment and control of the security perimeter.”²¹ The letter suggests that the Toronto Police Service, in addition to the ISU, would be relying upon the *FMIOA*. Therefore, it would seem that even when Chief Blair made his request under the *PWPA*, an *FMIOA* arrangement was still possible.

In addition, on June 11 2010, the RCMP wrote to Chief Blair “to identify the key legal authorities on which the RCMP [would] be relying” with respect to the G20 Summit.²² The final section of that letter outlines the powers granted to the RCMP under the *FMIOA* and that “[l]egal authorities also permit the RCMP to collaborate with other police forces such as the OPP in the fulfillment of its duties, including in relation to securing the perimeter.” An e-mail also dated June 11, 2010 from the RCMP to the Toronto Police Service and the OPP, which attached a draft of the RCMP’s June 11th letter, stated the following:

We have been talking for a while about authorities under the *FMIOA* as well as letters to state authorities etc.

¹⁷ Letter from Government of Canada to the Province of Ontario (11 June 2010) [emphasis added].

¹⁸ Letter from Government of Canada to the Province of Ontario (11 June 2010).

¹⁹ Letter from Government of Canada to the Province of Ontario (11 June 2010).

²⁰ Hon. R. McMurtry, *Report of the Review of the Public Works Protection Act* (Ontario: April 2011) at 10-11.

²¹ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

²² Letter from RCMP to Chief William Blair (11 June 2010).

I asked the legal folks to draft me something that could be sent to your Chiefs and Commissioner through [the RCMP] that would clearly explain RCMP authorities *and link a request to you to assist us with securing the secure zones.*²³

In his interview, the Chief also stated that while he was aware of discussions on various statutory authorities, including the *FMIOA*, he did not recall that the *PWPA* request was made because the federal government refused to enter into an *FMIOA* arrangement.²⁴ The Chief also stated that at the time he received the RCMP's June 11th letter he was not aware of any decision having been made "with respect to [the *FMIOA*], a designation under [the *FMIOA*]."²⁵

ii. *The Public Works Protection Act*

From the correspondence I have reviewed, it appears that the *PWPA* was being considered as another source of police powers in late April 2010. In an e-mail dated April 26, 2010, a lawyer at the Ministry of Community Safety and Correctional Services sent a copy of the *PWPA* to a member of the Toronto Police Service Planning Team describing it as "the legislation that allows for control of access to public areas – buildings and the like. It is the [*PWPA*] that allows for court security and searches."²⁶ The Chief's request to the Province to designate the Interdiction Zone as a "public work" under the *PWPA* was made less than three weeks later.²⁷

Therefore, it appears that both the *PWPA* and the *FMIOA* were being considered simultaneously as possible legal bases for the establishment of the security perimeter around the Interdiction Zone and of the accreditation system. Indeed, the Chief stated in his interview that "no decision had been made with respect to [the *FMIOA*]" at the time he made his request under the *PWPA*.²⁸

C. THE TORONTO POLICE SERVICE'S REQUEST FOR A REGULATION UNDER THE *PWPA*

i. A request by the Chief and not the Board

The Chief was advised that the request to designate the Interdiction Zone as a "public work" under the *PWPA* "had to come from the Police Chief of jurisdiction to the Minister."²⁹ He understood that lawyers from the City of Toronto and "other levels of government,"³⁰ as well members of the Toronto Police Service legal services and the ISU planning team,³¹ had considered the matter and

²³ E-mail from RCMP to Ontario Provincial Police and Toronto Police Service (11 June 2010) [emphasis added].

²⁴ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 93.

²⁵ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 15.

²⁶ E-mail from the Minister of Community Safety and Correctional Services to Toronto Police Service (26 April 2010).

²⁷ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

²⁸ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 15.

²⁹ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 89.

³⁰ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 89.

³¹ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 91.

determined that the request had to come from him. He signed the letter of request on that basis. In it he said:

Based on the advice that I was given, I believed that this regulation would provide greater clarity for the authorities that police officers would rely on for providing security for the Summit event and I would not have agreed to send the letter if I didn't believe that that was true, and I think it was. *It was an avenue of regulation that was available in law and it had been vetted by the legal team that was looking into these matters. I was quite satisfied that this was an appropriate course of action.*³²

Chief Blair also stated that he did not think a chief of police is precluded from making a request for a legislative change.³³ In particular, the Chief maintained that his request under the *PWPA* did not constitute “political activity” as defined by the *Police Services Act*, R.S.O. 1990, c. P.15, as amended and O. Reg. 544/91, which concerns the political activities of municipal police officers.³⁴ Section 46 of the *Police Services Act* provides that “no municipal police officer shall engage in political activity, except as the regulations permit.” The regulation that governs political activities of municipal police officers is O. Reg. 544/91, *Political Activities of Municipal Police Officers*.³⁵ Sections 2 and 3 of the O. Reg. 544/91 contemplate a relatively narrow definition of “political activity.” That definition includes, in essence, participation in an election campaign or expressing particular political views. O. Reg. 544/91 does not address the matter of a police officer or a chief of police advocating for or requesting legislative changes.

The existing Board policy addressing this matter – Political Activity of Police Officers – simply incorporates the provisions of O. Reg. 544/91 and extends them to all members of the Toronto Police Association. In other words, it extends the provisions of O. Reg. 544/91 to both officers and civilian members of the Toronto Police Service. The Board policy, however, does not address the issue of the chief of police seeking legislative change and does not place any restrictions on the chief of police in this regard.

Despite the absence of any express prohibition, Chair Mukherjee made clear in his interview that, in his opinion, the *Police Services Act* “makes it the Board’s responsibility to seek legislative change”³⁶ and that the “Chief is prevented from advocating on policy and legislative changes.”³⁷

I conclude that Chief Blair’s request under the *PWPA* did not contravene any provincial regulations or Board policy concerning the political activity of police officers that existed at that time. The statutory and policy restrictions on political activity of police officers are aimed at separating the involvement of police officers, while they are acting in their official capacity or identifying themselves as police officers, from political fundraising or other forms of support for specific political candidates, parties, or platforms.

³² Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 111 [emphasis added].

³³ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 87.

³⁴ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 87.

³⁵ Political Activities of Municipal Police Officers, O. Reg. 544/91 was repealed on 5 July 2010.

³⁶ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 93.

³⁷ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 94.

Nonetheless, in my opinion, there is a gap in the current provincial legislation and Board policies. There is no law or Board policy concerning the entity responsible for seeking legislative changes relating to police powers. Seeking changes to police powers relates to the police services board's general responsibility for the provision of adequate and effective police services. This is particularly so where the change has a direct bearing upon the legal and constitutional rights of members of the public. It is for the police services board and not the chief of police to seek legislative changes that impact on policing in a municipality. I return to this matter later in this chapter and outline a recommendation that addresses this gap.

ii. Overview of the *PWPA*

The *PWPA* was originally enacted in September 1939 as emergency legislation following the outbreak of World War II. Today, the *PWPA* is relied upon to conduct searches at courthouses as part of general courthouse security and to secure various nuclear and non-nuclear power generating facilities in Ontario. A copy of the *PWPA* is appended to this report at Appendix "J."

In order to understand the nature of the Toronto Police Service's request to the Ministry of Community Safety and Correctional Services for a designation under the *PWPA*, it is important to outline what the *PWPA* provided for generally.

a. Definition of a "public work"

Section 1 of the *PWPA* defines a "public work" as follows:

- (a) any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,
- (b) any provincial and any municipal public building, and
- (c) any other building, place or work designated a public work by the Lieutenant Governor in Council.

b. Powers of guards and peace officers

Section 2 allows for the appointment of "guards" for the purpose of protecting a public work. Guards appointed under section 2 enjoy "for the purposes of [the *PWPA*] the powers of a peace officer."

Section 3 sets out the additional powers granted to a guard or peace officer under the *PWPA*:

3. A guard or peace officer

- (a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;

(b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and

(c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering.

In addition, subsection 5(1) provides the following:

5 (1) Every person who neglects or refuses to comply with a request or direction made under this Act by a guard or peace officer, and every person found upon a public work or any approach thereto without lawful authority, the proof whereof lies on him or her, is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than two months, or to both.

(2) A guard or peace officer may arrest, without warrant, any person who neglects or refuses to comply with a request or direction of a guard or peace officer, or who is found upon or attempting to enter a public work without lawful authority.

c. Additional powers

Subsection 6(b) enables the Lieutenant Governor in Council to make regulations that define the areas that constitute “approaches” to public works and subsection 6(c) enables the Lieutenant Governor in Council to make regulations “respecting any matter necessary or advisable to carry out effectively the intent and purpose of [the *PWPA*].”

iii. The request

On May 12, 2010, Chief Blair wrote to the Minister of Community Safety and Correctional Services requesting “the Lieutenant Governor in Council to designate the area of, or highways within, the intended security perimeter as a public work for the period from June 21, 2010 through the end of the Summit on June 27, 2010.”³⁸

In his letter of request, Chief Blair stated that the establishment of a security perimeter around the Interdiction Zone was “one of the cornerstones of the Integrated Security Unit’s security plan.” The Chief went on to explain that the purpose of the security perimeter was to “ensure the safety and security of those attending the Summit, the Summit site itself and people and property within the area close to the Summit site.”³⁹

Chief Blair stated that the Toronto Police Service would be relying upon various legal sources, including the powers granted to it under the common law and “provided certain conditions [were] met, the [*FMIOA*].”⁴⁰ However, he believed that “the provisions of the [*PWPA*] would *also* offer

³⁸ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

³⁹ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

⁴⁰ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

legal support for the extraordinary security measures being undertaking for this unusual event.”⁴¹ In particular, the Chief noted that the powers granted to peace officers under section 3 of the *PWPA*:

[...] would be extremely helpful in reinforcing the existing legal authority for police officers to control the security perimeter. Those powers [included] requiring persons entering the public work to identify themselves and state their purpose for entering and authority to search people and vehicles attempting to enter.

[A designation under the *PWPA*] would provide valuable additional support for the Integrated Security Unit and Toronto Police Service’s efforts to ensure a *firm* legal basis for the exercise of the powers necessary to protect the Summit attendees and to provide the high level of security required for this event.⁴²

Attached to the May 12th letter was a detailed description and aerial photograph of the Interdiction Zone.

In effect, the Chief requested that the entire area within the fence that surrounded the Interdiction Zone be designated a “public work” under the *PWPA*. This designation would grant officers the power to search and arrest without warrant and to demand identification from anyone attempting to enter the Interdiction Zone.

Following Chief Blair’s request, members of the Toronto Police Service G20 Planning Team continued to communicate with lawyers for the City of Toronto and the Ministry of Community Safety and Correctional Services in an effort to finalize the details of the designation. In particular, there were ongoing discussions as to what specifically within the Interdiction Zone would be designated as a “public work.” An e-mail from a lawyer for the City of Toronto to members of the Toronto Police Service outlined the three possibilities:

- Designating the entire area within the Interdiction Zone;
- Designating the entire area within the Interdiction Zone, excluding private property; or
- Designating just the highways within the Interdiction Zone.⁴³

All of the buildings and facilities within the Interdiction Zone that already fell under sections 1(a) and 1(b) of the *PWPA* did not require specific designation. For example, the Metro Toronto Convention Centre is owned by the provincial government and, therefore, is already a “public

⁴¹ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010) [emphasis added].

⁴² Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010) [emphasis added].

⁴³ E-mail from City of Toronto Legal Services to Toronto Police Service (14 May 2010).

work” as defined by s. 1(b) of the *PWPA*. The land surrounding the Rogers Centre, on the other hand, is private property and is not captured by either ss. 1(a) or (b) of the *PWPA*.

iv. O. Reg. 233/10

On June 15, 2010, the Minister of Community Safety and Correctional Services acknowledged Chief Blair’s request and informed him that “a regulation [had] been made under the *PWPA* in response to [that] request.”⁴⁴ The Minister of Community Safety and Correctional Services specifically “recognize[d] the desirability of having additional sources of legal authority to ensure clarity regarding the ability of the Toronto Police Service to take the steps that it will be taking.”⁴⁵ A copy of what was to become O. Reg. 233/10 was attached to the letter.

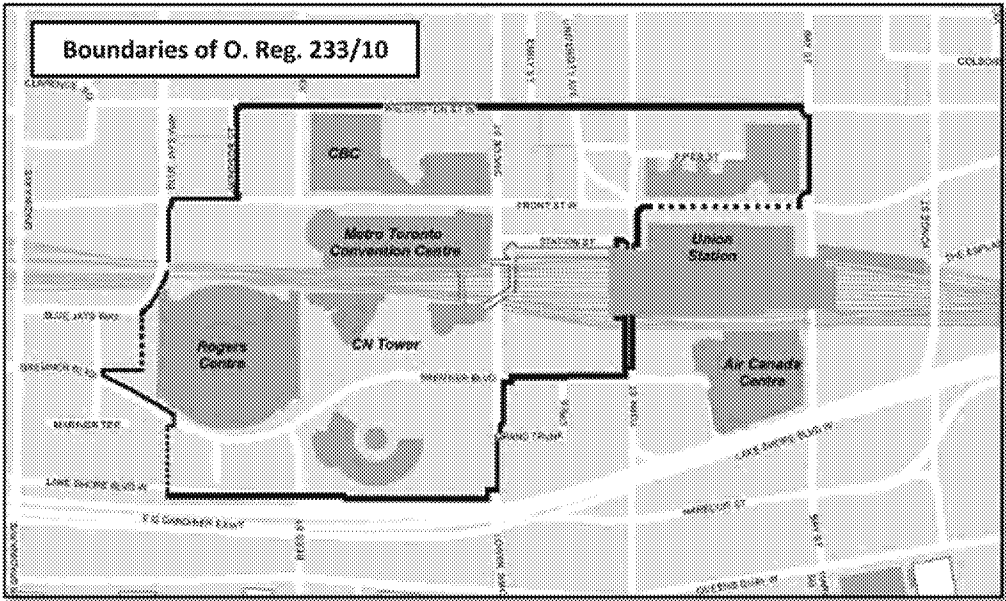
It is helpful to set out a brief chronology of these events that led to the making and revocation of O. Reg. 233/10:

- **June 3:** the Regulation was signed by the Lieutenant Governor.
- **June 16:** the Regulation was published on e-Laws (a provincial government website that publishes provincial legislation).
- **June 21:** the Regulation came into force.
- **June 28:** the Regulation was revoked.

The Regulation adopted the boundaries of the Interdiction Zone, shown in the map below, and designated the area within those boundaries as a “public work.”

⁴⁴ Letter from the Minister of Community Safety and Correctional Services to Chief William Blair (15 June 2010).

⁴⁵ Letter from the Minister of Community Safety and Correctional Services to Chief William Blair (15 June 2010).



The entire Regulation is reproduced here:

ONTARIO REGULATION 233/10

DESIGNATION OF PUBLIC WORKS

Designation

1. The following are designated as public works for the purposes of the Act:
 1. Everything described in clause (a) of the definition of “public work” in section 1 of the Act that is located in the area described in Schedule 1, including, without limitation and for greater certainty, every sidewalk in that area.
2. The places described in paragraphs 1, 2 and 3 of Schedule 2.

Revocation

2. This Regulation is revoked on June 28, 2010.

Commencement

3. This Regulation comes into force on the later of June 21, 2010 and the day it is filed.

SCHEDULE 1 AREA REFERRED TO IN PARAGRAPH 1 OF SECTION 1

The area in the City of Toronto lying within a line drawn as follows:

Beginning at the curb at the southeast corner of Blue Jays Way and Front Street West; then north to the centre of Front Street West; then east along the centre of Front Street West to the east curb of Windsor Street; then north along the east curb of Windsor Street to the centre of Wellington Street; then east along the centre of Wellington Street to the centre of Bay Street; then south along the centre of Bay Street to a point directly opposite the north wall of Union Station; then west along the exterior of the north wall of Union Station to the centre of York Street; then south along the centre of York Street, continuing east of the abutments under the railway overpass, and continuing south along the centre of York Street to the centre of Bremner Boulevard; then west along the centre of Bremner Boulevard to the east curb of Lower Simcoe Street; then south along the east curb of Lower Simcoe Street to the north curb of Lake Shore Boulevard West; then west along the north curb of Lake Shore Boulevard West to the south end of the walkway that is located immediately west of the John Street Pumping Station and runs between Lake Shore Boulevard West and the bus parking lot of the Rogers Centre; then north along the west edge of that walkway to the bus parking lot of the Rogers Centre; then west along the south edge of the bus parking lot of the Rogers Centre to the west edge of the driveway running between the parking lot and Bremner Boulevard; then north along the west edge of that driveway to the north curb of Bremner Boulevard; then west along the north curb of Bremner Boulevard to the east curb of Navy Wharf Court; then north along the east curb of Navy Wharf Court to the southwest point of the building known as 73 Navy Wharf Court; then east along the exterior of the south wall of that building; then north along the exterior of the east wall of that building to the curb of Blue Jays Way; then north along the east curb of Blue Jays Way to the curb at the southeast corner of Blue Jays Way and Front Street West.

SCHEDULE 2 DESIGNATED PLACES REFERRED TO IN PARAGRAPH 2 OF SECTION 1

1. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

Beginning at the south end of the walkway that is located immediately west of the John Street Pumping Station and runs between Lake Shore Boulevard West and the bus parking lot of the Rogers Centre; then north along the west edge of that walkway to the bus parking lot of the Rogers Centre; then west along the south edge of the bus parking lot of the Rogers Centre to the west edge of the driveway running between the parking lot and Bremner Boulevard; then north along the west edge of that driveway and ending at Bremner Boulevard.

2. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

Beginning at the southwest point of the building known as 73 Navy Wharf Court; then east along the exterior of the south wall of that building; then north along the exterior of the east wall of that building and ending at the curb of Blue Jays Way.

3. The below-grade driveway located between Union Station and Front Street West and running between Bay Street and York Street in the City of Toronto.

D. THE BOARD'S LACK OF INVOLVEMENT IN MAKING THE REQUEST FOR O. REG. 233/10

In their interviews with the Review, Board members stated that, before the G20 Summit, they were not aware of the nature of the request made by the Chief to the Province or of the additional legal powers that were ultimately granted to the Toronto Police Service as a result of that request.⁴⁶

As I have described in *Chapter 2 – Civilian Oversight in Policing*, for the Board to appreciate when a ‘critical point’ arises to enable it to engage the chief of police in consultation, it must receive at least initial information that is clear and complete. The interaction, or lack thereof, between the Chief and the Board concerning the request under the *PWPA* is an important illustration of what can occur when the Board does not know enough at the outset to even appreciate that a ‘critical point’ has arisen.

The information given to the Board regarding the request under the *PWPA* was unclear. It was also incomplete. Moreover, the request to the Ministry of Community Safety and Correctional Services was made before the Board was informed that a request was being contemplated. The result was that the Board played no meaningful role in making a request for a legislative change in police powers that would have a direct impact on the Toronto Police Service’s ability to adequately and effectively police the G20 Summit. As Councillor Adam Vaughan commented, “I don’t think the Board played a role. I mean that’s the reality.”⁴⁷

i. Information provided to the Board

The information provided to the Board about the request under the *PWPA* was unclear. The Chief’s request under the *PWPA* was considered, once, during the closed meeting of the Board which took place on May 20, 2010. The Board minutes of that meeting include the notes provided by Chief Blair to the Board in advance of the meeting in support of his briefing on the G20 Summit. The first item listed in the notes read:

⁴⁶ I discuss the information provided by the Chief to the Board in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*.

⁴⁷ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 24.

We will be asking the Province for the authority to designate various properties and/or spaces situated within the City of Toronto to ensure that they are properly protected subject to acts of violence.⁴⁸

In his interview with the Review, the Chief confirmed that this item in the notes concerned the *PWPA* and that the *PWPA* was also specifically mentioned during the meeting.⁴⁹ I note, however, that the language used in the notes is vague: “the authority to designate various properties and/or spaces.” It does not identify the relevant statutory authority. More importantly, it does not make clear that, as a result of the designation, the Toronto Police Service would be granted additional powers under the *PWPA*, which included powers to search and arrest without warrant.

At the May 20th Board meeting, the Chief stated that the brief discussion of the *PWPA* “did not result in an extensive conversation with the Board.”⁵⁰ The Chief recalled that he advised the Board of the Toronto Police Service’s discussions with the Ministry of Community Safety and Correctional Services concerning the request:

I advised [the Board] that we were in discussions with the province and that there was discussion about asking the province for that designation, but we weren’t asked for a justification for that. I don’t want to...I can’t recall with certainty but certainly my understanding of the rationale was to *clarify the authorities of the police and to deal with certain concerns that had been expressed to us regarding the civil liabilities that may arise*.⁵¹

In the Chief’s letter to the Ministry of Community Safety and Correctional Services dated May 12, 2010, however, the focus is on safety and security as opposed to civil liability concerns: “the security perimeter will be established to help ensure the safety and security of those attending the Summit, the Summit site itself and people and property within the area close to the Summit site.”⁵² In addition, the letter expressly refers to the powers conferred upon police officers under the *PWPA*, including “requiring persons entering the public work to identify themselves and state their purpose for entering and authority to search people and vehicles attempting to enter.”⁵³ These powers are not mentioned in the notes submitted to the Board nor do they seem to have been discussed at any time with the Board specifically.

It was clear from their interviews with the Review that, at the time, Board members did not understand that the Chief was seeking the creation of a new regulation or additional legal powers or, at least, did not appreciate that if the designation being sought by the Chief was granted it would have the effect of providing the Toronto Police Service with additional legal powers. Chair Mukherjee stated that he “didn’t think that [the Chief] was saying that he was asking for additional

⁴⁸ Toronto Police Services Board Minutes (20 May 2010) (Closed Meeting), Item #C159, “Chief’s Monthly Update on Preparations for the G8/G20 Summits” at 1.

⁴⁹ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 83.

⁵⁰ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 84.

⁵¹ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 84 [emphasis added].

⁵² Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

⁵³ Letter from Chief William Blair to the Minister of Community Safety and Correctional Services (12 May 2010).

policing powers, he was asking for a designation of certain properties.”⁵⁴ Similarly, when asked if she understood that the designation would result in the granting of additional police powers, Board Member Judi Cohen responded, “No, not at all.”⁵⁵

The real-time reaction of Board members to media reports on June 25, 2010 – the day before the G20 Summit – concerning the passage of O. Reg. 233/11 also made clear that they did not understand the ramifications of the Chief’s request under the *PWPA*. In an e-mail to all Board members on that date, Board Member Hamlin Grange wrote the following:

Could (should) the Board had been informed of this “request”?⁵⁶

All I am asking is...could the Chief have given the Board a heads-up? I am not in the habit of reviewing e-law (*sic*). (And from all indications, few people are).⁵⁷

Chair Mukherjee subsequently e-mailed a member of Board Staff to enquire whether or not the Board had been briefed on the *PWPA*. The staff member responded:

Some weeks ago, the Chief did advise the Board, in a confidential meeting, that an extension of the Public Works [P]rotection Act to the security zone was being sought. *While I do not recall that there were any details given about the effect of the extension*, the Board was informed that this authority was being sought.⁵⁸

Based on this response, Chair Mukherjee then e-mailed Board members and stated that they had indeed been informed of the Regulation:

Now I have it from three separate sources that the Chief had informed the Board prior to June 2 that powers were being sought under this act. Notes from that confidential Board meeting with show this.⁵⁹

Notwithstanding Chair Mukherjee’s e-mail, the response given by Board members during their interviews with the Review made clear that the Board did not understand the nature of the Chief’s request and, in particular, that it would result in additional police powers.

The Board was also not advised of the wider context in which the request under the *PWPA* was made. Further, on being advised of the request, the Board did not receive any details of the request, including, for example, the Chief’s letter to the Ministry of Community and Correctional Services, a copy of the *PWPA* itself, or information about how the requested designation would result in additional police powers. The result was that the Board could not consult fully, or at all, with the Chief on the proposed request.

⁵⁴ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 91.

⁵⁵ Review’s Interview with Judi Cohen (12 September 2011, Toronto) at 142.

⁵⁶ E-mail from Hamlin Grange to Board Members (25 June 2010).

⁵⁷ E-mail from Hamlin Grange to Board Members (25 June 2010).

⁵⁸ E-mail from Board Staff to Chair Alok Mukherjee (26 June 2010) [emphasis added].

⁵⁹ E-mail from Chair Alok Mukherjee to Board Members (26 June 2010).

In my view, the Board should have been informed of the wider context in which the request under the *PWPA* was made. The search for an additional legal basis for the security perimeter and the accreditation system began in March 2010 and continued until the middle of June 2010. Throughout that period, the Chief did not consult with the Board about the legal framework in which Toronto Police Service officers would police the G20 Summit. The Chief did not inform the Board that the Toronto Police Service (and the ISU) were of the view that additional statutory powers were necessary as it was unclear whether police powers at common law were sufficient.

The Chief stated in his interview that he did not raise the prospect of an *FMIOA* arrangement with the Board because “no one from the ISU planning team, no one from my Service, and no one from the legal team came and asked me to make such a request.”⁶⁰ However, an *FMIOA* arrangement may have affected the Toronto Police Service’s responsibilities during the G20 Summit. Similarly, a designation under the *PWPA* would have added to police powers and, therefore, directly affected the Toronto Police Service’s ability to adequately and effectively police the G20 Summit. For these reasons, the Board should have been advised about both options so it could engage in an informed consultation with the Chief. Consultation between the Chief and the Board could have led to the Board’s direct involvement in discussions between the provincial and the federal government concerning the possibility of an *FMIOA* arrangement and, ultimately, the request under the *PWPA*.

It is clear from my review of the meeting materials that the Board never received any of the correspondence or other documents related to the Chief’s request to the Ministry of Community and Correctional Services or the Ministry’s response. During his interview with the Review, Councillor Vaughan recalled the following:

I don’t recall the legislation being named in particular. I remember the intent of what the request was going to be. I also distinctly remember saying he was asked to put this forward and as the police Chief, he was the one who had to trigger under the legislation they were going to use but *we didn’t see the legislation and we didn’t see any of the communication back and forth between the Minister and the Chief* on this nor did we get that memo to lead to some of the confusion. It was basically “I’ll be asking for some initial powers to be able to protect the fence and we expect to be able to get that from the province.”⁶¹

For the Board to understand the Chief’s request under the *PWPA*, it required at least certain initial information. That information should have included express reference to the provisions of the *PWPA* and, specifically, an explanation of the additional powers of search and arrest that would be granted to officers under sections 3 and 5 of the *PWPA*. The Board should also have been provided with the Chief’s letter to the Ministry of Community and Correctional Services, which outlined the legal consequences of the requested designation and provided the reasons why a designation under the *PWPA* was being sought. That information was readily available to the Chief and I can see no reason why it should not have been provided to the Board before or at the

⁶⁰ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 16.

⁶¹ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 20 [emphasis added].

May 20th Board meeting. Those two pieces of information – the provisions of the *PWPA* and the letter – were necessary for the Board to understand what was taking place.

Ms. Cohen made the following comment in her interview:

[T]here should have been a full report on this and [the Board] should have had the opportunity to understand what the requirement was, why it was needed [...] in terms of adequate and effective policing...⁶²

Chief Blair stated during his interview that the Board asked him few questions during its May 20th meeting.⁶³ The responses given by the Chief and Board members during their interviews with the Review indicate that the *PWPA* was mentioned specifically and that there was a brief explanation given by the Chief as to why a designation under the *PWPA* was required.⁶⁴ While there was some information upon which the Board could have questioned the Chief, for the reasons I have already identified, it is understandable why the Board did not have many questions to ask: it did not understand what designation was being sought, how this designation actually related to the Toronto Police Service's ability to adequately and effectively police the G20 Summit or the specific process that had to unfold for this designation to be granted. The Board simply was not provided a sufficient baseline of information to appreciate how its oversight role was engaged.

ii. Timing of the provision of information to the Board

The Chief's request to the Province under the *PWPA* was made before any discussion took place with the Board. The Chief's letter to the Ministry of Community and Correctional Services was sent on May 12, 2010, eight days before the May 20th Board meeting. In addition, the notes delivered to the Board in advance of its meeting stated that "[w]e *will be* asking the Province for the authority to designate various properties and/or spaces situated within the City of Toronto."⁶⁵ In his interview, the Chief explained that he is required to provide his notes well in advance of a Board meeting:

And I don't know when the written document was submitted. We have to submit documents to the Board usually a few weeks in advance to make the agenda. So, the deadline for submission of documents to the Board in order to get on the agenda is usually two or three weeks in advance of that thing, otherwise it doesn't get on to the agenda. It moves to the next one.⁶⁶

Nonetheless, the record makes clear that the request to the Province was made before the Board was informed that a request would be made. The Chief did not consult the Board in writing or request a special meeting of the Board before he delivered his request to the Province on May 12, 2010. Indeed, the Chief stated in this interview that he "signed the request and *advised the Board*

⁶² Review's Interview with Judi Cohen (12 September 2011, Toronto) at 144.

⁶³ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 84.

⁶⁴ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 83-84.

⁶⁵ Toronto Police Services Board Minutes (20 May 2010) (Closed Meeting), Item #C159 at 1 [emphasis added].

⁶⁶ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 85.

that I had done so.”⁶⁷ Had any input been provided by the Board during its May 20th meeting, it would have been too late.

E. LEGAL ADVICE RECEIVED BY THE BOARD

In *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service*, I addressed the challenges with the current role of Board counsel. I also recommended that the Board obtain independent legal advice from outside counsel on all matters. The *PWPA* request was a specific, real-time example that highlights these challenges and underscores the Board’s need for independent legal advice.

When asked whether he provided the Board with the advice the Toronto Police Service had received from the City Solicitor, the Chief replied as follows:

No. We didn’t have that discussion on sort of the legal discussion that had taken place. I didn’t discuss that with the Board. *They had legal advice available to them in the [Board] room.*⁶⁸

In addition, the Board did not ask for or receive any legal advice from its own counsel concerning the *PWPA* or *FMIOA*. The City of Toronto lawyer responsible for providing legal advice to the Board (“Board counsel”) was copied on an e-mail between the Toronto Police Service and another City lawyer responsible for the request under the *PWPA*, which was sent five days before the May 20th Board meeting.⁶⁹ Board counsel was also present at the May 20th Board meeting. Board counsel, however, did not inform the Board that the request had already been made. There was also no advice provided to the Board at that time concerning the legal implications of the requested designation.⁷⁰ For its part, the Board did not seek legal advice with respect to the *PWPA* specifically.⁷¹

F. THE APPROPRIATE ROLE FOR THE BOARD IN SEEKING LEGISLATIVE CHANGE

O. Reg. 233/10 raises the important issue of how legislative change should be sought where it may be necessary to enhance the provision of adequate and effective police services in Toronto. I conclude that the Board, and not the Chief, is the appropriate entity to seek such change.

As I have explained, there is no statutory provision in Ontario that prescribes the process through which a police service or a police services board may seek legislative changes. There is also no

⁶⁷ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 89 [emphasis added].

⁶⁸ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 87 [emphasis added].

⁶⁹ E-mail from City of Toronto Legal Services to Toronto Police Service (14 May 2010).

⁷⁰ Review’s Interview with Judi Cohen (12 November 2011, Toronto) at 141-142.

⁷¹ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 92; Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 142.

Board policy that addresses the matter. The regulation and Board policy that concern the political activities of police officers are of no assistance.⁷²

The Chief advised us that he is often asked for his advice regarding legislation or legislative amendments on various issues, including, for example, the retention of the long-gun registry.⁷³ The Chief recognized, however, that his request under the *PWPA* was a different matter:

I'm often asked by government, different levels of government, about potential legislative responses to public safety issues and based on my experience and expertise as it's perceived on the issues relevant. And so, in that case, it's my opinion they're seeking. *This is somewhat different in that when we're asking for a new law.*⁷⁴

I agree. A request for legislative change that would grant police officers additional powers of search and arrest without warrant must be distinguished from advice that the Chief may be asked for based on his particular experience and expertise. The former directly affects the powers available to officers when they engage in law enforcement and, consequently, the rights of the public that are subject to that enforcement. The latter is policy advice would not necessarily affect police powers.

As the entity that is responsible for the provision of adequate and effective policing under the *Police Services Act*, it makes sense that the Board is the body responsible for seeking legislative change. Legislative action, including action that can result in the granting of additional law enforcement powers to police officers, affect the very framework in which police services are delivered in Toronto. It is the Board's responsibility to maximize the delivery of adequate and effective policing within this framework and, where it believes the framework requires improvement in this regard, to seek those improvements. This issue was raised by two Board members in their interviews with the Review:

[T]he Board should have had the opportunity to understand what the requirement was, why it was needed and in terms of adequate and effective policing, so was *this required in order to provide adequate and effective policing*, and were never given that opportunity.⁷⁵

It's our delegated responsibility to provide adequate and effective policing. And if we feel we need more help in or more rules or change in law, and the Chief comes forth and says

⁷² Section 46 of *Police Services Act* prohibits municipal police officers from engaging in "political activity, except as the regulations permit." The relevant regulation is *Political Activities of Municipal Police Officers*, O. Reg. 544/91. Toronto Police Services Board Policy – Political Activity of Police Officers extends the application of O. Reg. 544/91 to civilian members of the Toronto Police Service.

⁷³ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 87-88.

⁷⁴ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 88 [emphasis added].

⁷⁵ Review's Interview with Judi Cohen (12 September 2011, Toronto) at 144 [emphasis added].

you know I'd like this or I want this, I think he should have come to us and we should have gone to the province.⁷⁶

Conversely, the Chief is responsible under s. 41(1)(a) of the *Police Services Act*, for administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the Board. He is responsible for implementing Board policy and applicable legislation, not for seeking its creation or amendment.

The system of civilian oversight created by the *Police Services Act* makes matters of policy the responsibility of a police services board. Policy considerations affect legislative choices and, together, policy and legislation determine the boundaries of police powers and ensure the adequacy and effectiveness of police services in Ontario. As one Board member described it in her interview, “[legislative change] is not limited to the Service itself...[s]o it’s something bigger than the Service itself and that’s why I would say that that was something I would consider within the purview of the Board.”⁷⁷

The absence of a formal Board policy has led to confusion as to which entity is responsible for seeking legislative changes. Chief Blair noted in his interview that there is a standing item on the agenda for Board meetings for “the Chair [to advise] if he or the Board had made any recommendation with respect to any federal, provincial or municipal regulation and [the next agenda item] is when I provide the same update to the Board.”⁷⁸ These two standing items on the Board’s agenda contradict the position that Chair Mukherjee stated exists: “[the] Chief is prevented from advocating on policy and legislative changes.”⁷⁹ In Chair Mukherjee’s opinion “under normal circumstances, any legislative change would have to be initiated by the Board, not the Chief.”⁸⁰ In my opinion, the standing item on the Board’s agenda under which the chief of police provides an update on *his* recommendations to secure legislative changes should be removed. In addition, the Board should create a policy which makes clear that responsibility rests with the Board, following consultation with the chief of police.

⁷⁶ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 25 [emphasis added].

⁷⁷ Review’s Interview with Judi Cohen (12 September 2011, Toronto) at 148.

⁷⁸ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 87.

⁷⁹ Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 97.

⁸⁰ Review’s Interview with Chair Alok Mukherjee (19 September 2011, Toronto) at 117.

Recommendation No. 29: Creation of a Board policy concerning the seeking of legislative change

The Board should make a policy on the process governing the seeking of changes to legislation on the provision of police services. Under this policy, the Chief of Police should be required to advise the Board when the chief of police is of the opinion that the current legislative powers are not sufficient for the purposes of carrying out any police responsibilities or otherwise should be amended.

Once advised, the Board should obtain legal advice concerning the type of legislative change that would be required to address the chief of police's concern and determine whether it wishes to make a request for change to the relevant level of government. All requests for legislative change that may affect the Toronto Police Service's delivery of policing services should be made by the Board.

Following the implementation of this policy, the Board should also remove as a standing item on its agenda the opportunity for the chief of police to inform the Board of his attempts to secure legislative changes.

G. COMMUNICATION OF AN INCORRECT INTERPRETATION OF O. REG. 233/10

Terms of Reference 3(iii) and 7(b) require that I address the communication to the public by the Toronto Police Service of an incorrect interpretation of O. Reg. 233/10. On June 25, 2010, the day before the G20 Summit began, Chief Blair stated during a press conference that O. Reg. 233/10 gave police the power to enforce the *PWPA* up to five metres *outside* of the new area designated by the Regulation. That statement was incorrect. In fact, O. Reg. 233/10 only applied *within* the Interdiction Zone fence erected for the G20 Summit.

On the materials I have reviewed, it is clear that the incorrect communication to the public of the effect of O. Reg. 233/10 was not deliberate. Chief Blair expressed his understanding at that time of the interpretation of O. Reg. 233/10 in response to a question during a press conference. That understanding was based on a briefing he had received from his legal advisors.⁸¹

i. Lead up to the G20 Summit

I have found no reference to a “five metre rule” in the Toronto Police Service's planning documents or in the public statements made by the Toronto Police Service, or other members of the ISU before June 25, 2010. Information on the *PWPA* was included in the training materials that were provided to all police officers deployed during the G20 Summit.⁸² The training materials

⁸¹ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 97.

⁸² Toronto Police Service, “Course Training Standard, Toronto Police College Learning Development & Standards Section - G20” (2010) at 14; Toronto Police Service, “Ontario Provincial Statutes for Out of Province G20 Police Officers” (2010) – PowerPoint Presentation at 11-13.

simply outline the provisions of the *PWPA*, including the definition of a “public work” and the powers granted under sections 3 and 5 of the *PWPA*. They make no reference to a “five metre rule” or to O. Reg. 233/10. However, in his interview with the Review, the Chief stated that officers were advised as part of their training that the *PWPA* applied up to five metres *outside* of the fence.⁸³

As part of its G20 Summit communication strategy, the City of Toronto, in consultation with the ISU, produced an information article, flyers and prepared advertisements which appeared in local newspapers.⁸⁴ The article and flyers contained no information pertaining to the *PWPA* or O. Reg. 233/10. The newspaper advertisements made reference to the requirement to show identification and to have a valid purpose for entering the Interdiction Zone and that anyone requesting access may be subject to a search. However, none of those materials made reference to a “five metre rule.”

Finally, an internal document prepared by the Toronto Police Service to assist in briefing the media, which is dated June 24, 2010, contains no reference to a “five metre rule.” Instead, it notes that “anyone who fails to identify themselves appropriately or state the purpose for which they wish to enter a secured area may be investigated further under [the *PWPA*].”⁸⁵

Despite the Board specifically asking the Chief to advise it of communication matters relating to the G20 Summit,⁸⁶ it did not receive any information concerning how O. Reg. 233/10 would be explained to the public. Further, the Board took no part in advising the general public about the *PWPA*.

ii. The incorrect interpretation

Following the making of O. Reg. 233/10, the Toronto Police Service incorrectly interpreted O. Reg. 233/10 as providing police with the power to demand identification from and search people who came within five metres of the fence that surrounded the Interdiction Zone, the boundary of the “public work” as defined by O. Reg. 233/10. As I have already mentioned, this interpretation was incorrect. O. Reg. 233/10 only applied inside the Interdiction Zone fence.

It appears that the source of the Toronto Police Service’s confusion was the reference to “within five metres” in Schedule 2 to O. Reg. 233/10. Schedule 2 provided:

1. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

Beginning at the south end of the walkway that is located immediately west of the John Street Pumping Station and runs between Lake Shore Boulevard West and the bus parking lot of the Rogers Centre; then north along the west edge of that walkway to the

⁸³ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 99.

⁸⁴ Hon. R. McMurtry, *Report of the Review of the Public Works Protection Act* (Ontario: April 2011) at 16.

⁸⁵ Toronto Police Service, “Media Lines – Persons Arrested under the Public Works Protection Act” (24 June 2010).

⁸⁶ E-mail from Chair Alok Mukherjee to Chief William Blair, Board Staff (16 March 2010).

bus parking lot of the Rogers Centre; then west along the south edge of the bus parking lot of the Rogers Centre to the west edge of the driveway running between the parking lot and Bremner Boulevard; then north along the west edge of that driveway and ending at Bremner Boulevard.

2. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

Beginning at the southwest point of the building known as 73 Navy Wharf Court; then east along the exterior of the south wall of that building; then north along the exterior of the east wall of that building and ending at the curb of Blue Jays Way.

3. The below-grade driveway located between Union Station and Front Street West and running between Bay Street and York Street in the City of Toronto. [emphasis added]

The Toronto Police Service understood that the reference to “within five metres” referred to any land that was within five metres outside of the fence. That interpretation was incorrect. The purpose of O. Reg. 233/10 was to ensure that the security fence that surrounded the Interdiction Zone was located on a “public work.” Schedule 1 to O. Reg. 233/10 designated as a “public work” everything from the fence inwards that was *already* a “public work,” as defined by ss. 1(a) and (b) of the *PWPA*. Those subsections provided the following:

1. In this Act, [...] “public work” includes,
 - (a) *any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,*
 - (b) any provincial and any municipal public building, and [...] [emphasis added]

The majority of the fence stood on public streets and sidewalks that were “public works” as defined by Schedule 1 to O. Reg. 233/10. However, the fence stood on three portions of private property that did not constitute “public works” under ss. 1(a) and (b) of the *PWPA*. Those sections are shown as dashed lines on the map found earlier in this chapter. The purpose of Schedule 2 to O. Reg. 233/10 was to bring within the designation of “public works” those three specific pieces of private property which were not included under the designation contained in Schedule 1. Subsection 1(c) of the *PWPA* provides that a “public work” includes “any other building, place or work designated a public work by the Lieutenant Governor in Council.” However, to avoid designating each of the three pieces of private property in their entirety, only the areas that were “within five metres” of the fence were designated as “public works.”

The incorrect interpretation of O. Reg. 233/10 was reproduced in newspaper articles that were published on June 25, 2010. One article, published in the *Toronto Star*, stated that “[a]ccording to

the new regulation, “guards” appointed under the act can arrest anyone who, in specific areas, *comes within five metres of the security zone.*”⁸⁷

iii. Toronto Police Service’s communication of the incorrect interpretation of O. Reg. 233/10

On June 25, 2010, Chief Blair scheduled a press conference in response to media reports concerning the O. Reg. 233/10. Before giving the press conference, Chief Blair met with a group of advisors, including Toronto Police Service legal counsel, to be briefed on the *PWPA*.⁸⁸ In his interview with the Review, Chief Blair stated that his main concern at the time was responding to allegations that O. Reg. 233/10 had been passed “in secret.”⁸⁹ He was advised that O. Reg. 233/10 had been published on e-laws, an electronic source of legislative information available to the public through a Province of Ontario website.

As part of the briefing, Chief Blair also asked for a copy of the legislation and an overview of the powers granted under the *PWPA*.⁹⁰ After reading the detailed description of the area designated as a “public work” in O. Reg. 233/10, he asked for clarification as to the precise area to which the *PWPA* applied. At that point, the Chief was advised that the powers of the *PWPA* applied to the Interdiction Zone and up to five meters *outside of the fence* surrounding the Interdiction Zone. The Chief stated in his interview that he had no reason to doubt the advice he was given and that this information made sense to him, as he was aware that Toronto Police Service officers had been trained on the basis of the same incorrect interpretation.⁹¹

During the press conference, the Chief was asked about the specific boundaries of the area designated by O. Reg. 233/10. In response, the Chief provided a copy of the *PWPA* and of O. Reg. 233/10 to the media. The Chief then went on to provide his own explanation of the designated area as, in his words, O. Reg. 233/10 read “like a real estate document.”⁹² As part of that explanation, the Chief repeated the interpretation of O. Reg. 233/10 that he had been provided during his briefing, which included reference to the incorrect “five metre rule.”

I do not think it was the responsibility of the Chief alone to explain how O. Reg. 233/10 was passed or to provide an interpretation of that Regulation. Given the extent of the media attention respecting the manner in which O. Reg. 233/10 was passed, it would have been helpful if the Ministry of Community Safety and Correctional Services had played a greater role in providing information to the public.

⁸⁷ Jennifer Yang, “G20 law gives police sweeping powers to arrest people” *Toronto Star* (25 June 2010) [emphasis added].

⁸⁸ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 97.

⁸⁹ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 97.

⁹⁰ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 97-98.

⁹¹ Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 99.

⁹² Review’s Interview with Chief William Blair (18 November 2011, Toronto) at 99.

H. CORRECTING THE MISINTERPRETATION OF O. REG. 233/10

Following the press conference, the Toronto Police Service was contacted by the Ministry of Community Safety and Correctional Services and lawyers for the ISU and informed that the interpretation of O. Reg. 233/10 that Chief Blair had provided at the earlier press conference was incorrect.⁹³

i. Steps taken by the Toronto Police Service

Chief Blair stated that after being informed that the Toronto Police Service's interpretation of O. Reg. 233/10 was incorrect, he directed his legal counsel to draft a clarification which could be distributed to officers to advise them of the limits of their authority. The clarification as drafted contained the following explanation:

3. Pursuant to the power to make regulations under the *PWPA* identifying public works, the Province passed Regulation 233/10 to specifically designate as public works: ... *a five meter strip inside the fence* where the fence runs along two places that are not streets or sidewalks, specifically, land near a Rogers Centre parking lot and the land behind a building near the Rogers Centre. [emphasis added]

5. The *PWPA* and the Regulation do not confer authority on a police officer to compel people to identify themselves, be searched and be exposed to arrest for failing to comply other than in situations where a person is entering or trying to enter the designated area. The area designated by the Regulation as a public work does not extend outside the boundary of the fence. [emphasis in original]⁹⁴

Before this clarification was distributed, it was provided to the Ministry of Community Safety and Correctional Services to ensure that it was complete and accurate.⁹⁵

Once the clarification was finalized, the Toronto Police Service Incident Commander ordered that it be distributed to all police officers.⁹⁶ The Chief stated in his interview that the clarification was distributed to all officers when they were paraded, before being deployed.⁹⁷ Officers who had already been deployed were advised of the clarification by radio at about 9:00 p.m. on June 25, 2010.⁹⁸

During the G20 Summit, the Toronto Police Service took no steps to provide the correct interpretation of O. Reg. 233/10 to the public. Chief Blair was asked to explain this in his

⁹³ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 96.

⁹⁴ Toronto Police Service, "Public Works Protection Act" (25 June 2010) at 1.

⁹⁵ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 99.

⁹⁶ Internal Toronto Police Service e-mail (25 June 2010).

⁹⁷ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 103.

⁹⁸ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 103-104.

interview with the Review. He stated that his immediate concern was informing frontline officers of the correct interpretation of O. Reg. 233/10:

My immediate concern was to make sure that police officers knew the appropriate legal limits to their authority. And so we took steps immediately to communicate that. But we didn't call another press conference at that point and time. And you know, in hindsight, given where this went, and how events transpired, it would have been very useful to have clarified it in a public meeting, but it really, I guess, to me and my advisors, it didn't resonate as something that was urgent. What was urgent was making sure police officers weren't out there stopping and arresting people when they had no authority to do so.⁹⁹

On June 29, 2010, after a public Board meeting, the Chief responded to various questions from the media concerning O. Reg. 233/10 and the *PWPA*. After the formal question period had ended, he was asked why the Toronto Police Service considered O. Reg. 233/10 necessary in the first place. The Chief responded that it was “to keep the bad guys out.” In his interview with the Review, the Chief explained the specific circumstances in which he made that comment:

I did make that explanation publically, and when I was responding to a question about the [O. Reg. 233/10], and it was just in passing, it wasn't part of the media scrum. I was sort of just walking down the hall and the guy sort of shouted out to me and asked me the question, and that was my response as I was going by and I was not speaking to the miscommunication but rather [O. Reg. 233/10].¹⁰⁰

As I have said, I am satisfied that the communication of the Toronto Police Service's incorrect interpretation of O. Reg. 233/10 on June 25, 2010 was not a deliberate attempt to mislead the public. However, as the Toronto Police Service was responsible for disseminating the incorrect interpretation of O. Reg. 233/10, it should have taken steps to notify the public as soon as it became aware of its mistake. It was important for members of the public to be given an accurate statement of the additional powers the police had been granted so that they could conduct themselves accordingly.

ii. Steps taken by the Board

The Board played no role in correcting the incorrect interpretation of O. Reg. 233/10 that had been issued by the Toronto Police Service. This is because, due to its lack of knowledge and familiarity with O. Reg. 233/10, it was not aware that the interpretation was incorrect until the correct interpretation was reported in the media. Moreover, the Board played no role in the communication of the effect of O. Reg. 233/10 to the public in the first place, so it is consistent that it would not have been involved in correcting the erroneous communication.

The incorrect interpretation of O. Reg. 233/10 is an example of why the Board should be responsible for seeking legislative changes. If a legislative change is made, the Board has an important role to play in communicating that change and its consequences to the public. This

⁹⁹ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 103-104 [emphasis added].

¹⁰⁰ Review's Interview with Chief William Blair (18 November 2011, Toronto) at 107.

communication role may be especially important where changes to the law affect police powers and, as a result, have a direct impact on the manner in which the police interact with the public.

In this case, the Toronto Police Service should have informed the Board of its incorrect interpretation and erroneous communication of the effect of O. Reg. 233/10 immediately upon discovering what had occurred.

Recommendation No. 30: Communication of legislative changes to the public

The Board should create a policy that addresses how legislative changes that may affect policing by the Toronto Police Service will be effectively communicated to the public in advance of major events. The policy must ensure that the public receives adequate and correct information concerning police powers in a timely manner.

CHAPTER ELEVEN: THE PRISONER PROCESSING CENTRE

A. INTRODUCTION

In this chapter I address the two paragraphs of the Terms of Reference that are concerned with the Prisoner Processing Centre (“PPC”):

3(viii) With respect to the following matters, a review of the information that the Board was given, if any, and the role, if any, the Board played in considering and approving the principles and policies governing the design of and/or the use that would be made of the Prisoner Detention Centre.

8 What policies and principles were used to design the Prisoner Detention Centre on Eastern Avenue with respect to medical care for prisoners, access to lawyers, access to Duty Counsel, housing of prisoners with disabilities, housing of young people, access of young people to their parents, strip searches of prisoners, supply of food and water for prisoners, access to toilet facilities, personal property of prisoners, and releasing prisoners without charge. Were there any difficulties in the implementation of the policies and principles. Was the Prisoner Detention Centre adequate with respect to these policies and principles.

The PPC was a unique facility that was designed and built by the Toronto Police Service specifically for the G20 Summit. It was created to be a central location for the processing and, if necessary, investigation of all persons arrested for offences related to the G20 Summit. The PPC was located at 629 Eastern Avenue in Toronto and was operational from June 18 to June 28, 2010. The premises had previously been used as a film studio and required significant upgrades before it could be used as a detention facility. The PPC was designed to accommodate and process up to 500 prisoners a day and was the largest prisoner detention centre in the Toronto Police Service’s history. The Toronto Police Service was solely responsible for planning and operating the PPC.

For the purposes of this chapter, I have reviewed Chapter 17 of the Toronto Police Service’s G20 Summit Operational Plan which is concerned with the PPC exclusively (“PPC Plan”), relevant Toronto Police Service procedures, additional relevant Toronto Police Service planning and operational documents, the Toronto Police Service *After-Action Review*, and the answers provided by Chief Blair and Toronto Police Services Board (“Board”) members during their interviews with the Review. The Board did not possess any documents concerning the PPC.

I have also reviewed Closed Circuit Television (“CCTV”) video footage taken at the PPC during the two days of the G20 Summit. The video footage consisted of two-minute clips from each hour the PPC was operational during the two days of the G20 Summit. These two-minute clips were extracted from each of the 100 cameras at the PPC in order to provide a reasonable overview of the PPC in operation.

In addition, I have reviewed the Office of the Independent Police Review Director's *G20 Systemic Review Report* ("OIPRD Report") and have considered the submissions made at the three public hearings held by the Review in June 2010.

B. DESIGNING THE PPC

The PPC was designed specifically for the G20 Summit. Immediately following the announcement that the G20 Summit would be taking place in Toronto, the Toronto Police Service G20 Planning Team assessed the sufficiency of existing Toronto Police Service infrastructure related to the detention of arrested persons. In particular, the Planning Team considered the ability of the Toronto Police Service to handle the substantial increase in the number of arrests that could be expected during the G20 Summit. That assessment resulted in a Business Case Analysis ("PPC Business Case Analysis"). The Planning Team concluded that the existing Toronto Police Service processing and holding facilities, located at various police divisions across Toronto, were insufficient – both quantitatively and qualitatively. The primary concerns were that there were not enough cells to hold a large number of prisoners and bottlenecks would prevent the Toronto Police Service from processing prisoners in a timely manner, as required by law.

The investigative section of the Toronto Police Service G20 Planning Team ("PPC Planning Team") was responsible for designing and developing the PPC. The PPC Planning Team was comprised of Toronto Police Service investigative officers and a member of the Toronto Police Service's Court Services Unit, which is responsible for the management of prisoners at court facilities ("Court Services"). The Toronto Police Service members on the team included managers from the Toronto Police Service's Facilities Department, Video Services Unit, and Property and Evidence Management Unit. The Court Services Superintendent who would act as the operational commander of the PPC was also involved in the planning process.¹ In addition, an architect was hired to ensure that the facility would be constructed in compliance with applicable building codes. While its members possessed significant investigative and technical experience, no member of the PPC Planning Team had experience or expertise in designing and planning a large detention facility.

i. The short planning period

The limited planning time for the G20 Summit had a particular impact on planning for the PPC. The Toronto Police Service initially needed to find a building that could accommodate the anticipated volume of prisoners. The City of Toronto procured and leased 629 Eastern Avenue in March 2010.² The vacant buildings located on the premises had previously been used as a film studio and required extensive renovations in order to be used as a detention facility. The Toronto Police Service carried out building upgrades, constructed the cells, and installed necessary video and computer equipment – all of which had to comply with applicable standards.

¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, May 2012) at 202.

² Review's Interview with Board Staff and Legal Counsel (31 August 2011, Toronto) at 68.

The PPC Planning Team was also required to design and develop a detailed prisoner management process which would address the unique demands of a mass detention facility and would comply with existing legal standards. As a result, the PPC was ready to begin operations only about a week before the G20 Summit began.³ The challenges imposed by the short planning period are reflected in the PPC Plan, which contained the following disclaimer: the “plans have been created, analyzed and scrutinized to the level of detail possible in the 2010 G20 [Integrated Security Unit] Project Timeline.”⁴

The limited planning period also meant that the Court Service officers responsible for prisoner management at the PPC were given a very short time to learn a set of processes and procedures that were not familiar to them. I shall discuss the impact of the short transition from planning to operational phases later in this chapter.

These time constraints were apparent immediately following the announcement that the G20 Summit would be held in Toronto. Chief Blair expressed his concerns to the Board at the January 21, 2010 Board meeting.⁵ One Board member noted that the lack of time to properly design and build the PPC continued to be a concern expressed by Chief Blair.⁶ That Board member stated, in particular, that Chief Blair “seemed quite anxious more about the physical building, like having enough time physically to build this facility.”⁷

ii. The planning process

The PPC Planning Team’s overall intention in designing the PPC was to use as many existing policies and procedures as possible and to ensure that the Toronto Police Service’s best practices were followed. The PPC was modeled on a Toronto Police Service divisional facility, commonly understood as a police station. Divisional facilities are located across Toronto and are the places to which arrested persons are taken and held after arrest. The PPC Planning Team, therefore, relied almost exclusively on existing Board policies and Toronto Police Service procedures concerning prisoner care and management at divisional facilities in constructing the plans for the facility. I shall discuss this reliance on existing policies and procedures later in this chapter.

The PPC Planning Team initially conducted research with respect to the number of people arrested at prior G20 Summits and similar major international events.⁸ It also sought legal advice from the City of Toronto Legal Services department on issues that the Toronto Police Service had

³ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 44.

⁴ Toronto Police Service, *G20 Operational Plan*, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 11.

⁵ Toronto Police Services Board Minutes (21 January 2009) (Closed Meeting), Item #6, “2010 G8 and G20 Summit Meetings – Impact on the Toronto Police Service” at 4.

⁶ Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 198.

⁷ Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 198.

⁸ Review’s Interview with Chief William Blair (22 November, 2011, Toronto) at 2-3.

previously encountered in making arrests and detaining arrested persons, but the advice received was limited and simply outlined general legal standards.⁹

I note that the PPC Planning Team did not seek input from the Ministry of Community Safety and Correctional Services, the provincial ministry responsible for regulating police services in Ontario, and for establishing and regulating provincial detention centres. I shall discuss the Ministry of Community Safety and Correctional Services later in this chapter.

iii. Relevant legislation – Temporary detention facilities

a. Three types of temporary detention facilities

In order to understand what type of facility the PPC was, I shall first describe the three different types of temporary detention facilities in Toronto and Ontario.

Following arrest and before trial, a person arrested in Toronto may be held in three types of temporary detention facilities:

Toronto Police Service divisional facilities: Following arrest, a person is taken to a Toronto Police Service divisional facility (a police station) for booking. If the person is held for a bail hearing, he or she is taken to a specially designated divisional facility called a “lock-up” until the bail hearing takes place.¹⁰ The lock-ups are large enough to hold multiple prisoners for up to 24 hours. Each lock-up is designated to hold only female, male, or young prisoners.

Following the bail hearing, a person does not normally return to a divisional facility. I shall outline below the statutory provisions, Board policies, and Toronto Police Service procedures that apply to Toronto Police Service divisional facilities, including lock-ups, below.

Court facilities: Cells that are located at courthouses are used while the courts are in session so that persons awaiting a scheduled court appearance can be held in advance of that appearance. Court cells are operated by Court Services officers and are subject to Court Services unit-specific procedures.¹¹

Provincial detention facilities: If a person is remanded in custody and is awaiting trial, the person is held at a provincial detention centre, which is designed and operated by the

⁹ Legal memorandum from City of Toronto Legal Services to Toronto Police Service (9 February 2010).

¹⁰ A bail hearing must take place within 24 hours of a person’s arrest.

¹¹ Court Services’ procedures are called “policies.” In substance, however, they are procedures and I shall refer to them as procedures in order to avoid confusion.

Province of Ontario in accordance with the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M-22, and provincial regulations.¹²

Chief Blair made it clear in his interview that cells at Toronto Police Service divisional facilities are distinct from court cells and provincial detention facilities.¹³

Section 16.1 of the *Police Services Act*, R.S.O. 1990, c. P.15, permits a municipality to build and regulate temporary detention facilities. The provision is contained in the part of the *Police Services Act* that concerns the powers and responsibilities of municipalities for policing and provides the following:

Subject to the approval of the Ontario Civilian Police Commission, the council of every local municipality may establish, maintain and regulate detention facilities for the detention and imprisonment of persons sentenced to imprisonment therein for not more than 10 days, and of persons detained for examination on a charge of having committed any offence, or for transfer to any correctional institution for trial, or in the execution of any sentence, and such persons may be lawfully received and so detained in the detention facilities.¹⁴

Section 135(1)(3) of the *Police Services Act* provides the Lieutenant Governor in Council with authority to make regulations “requiring municipalities to provide police detention facilities, governing those facilities and providing for their inspection.” To date, no regulations have been passed under this provision and, therefore, there is no legislative direction that prescribes the manner in which Toronto Police Service divisional facilities, including lock-ups, are to be established, maintained, and regulated. As noted in the PPC Plan objective, there are “no Adequacy and Effectiveness Regulations that govern lock ups, holding areas or cells.”¹⁵ In practice, therefore, divisional facilities are operated in accordance with the Board policies and Toronto Police Service procedures that govern prisoner care and management. These procedures detail the booking process and prisoner care and management.

b. The Board’s responsibility for ensuring adequate facilities

The responsibility to ensure the adequacy of existing or planned police facilities rests with a police services board, if there is one. Section 16.1 of the *Police Services Act* permits a municipality (with the approval of the Ontario Civilian Police Commission, or “OCPC”) to establish a Toronto Police Service divisional facility. This power is consistent with s. 4(3) of the *Police Services Act*, which requires a municipality to provide the “infrastructure” necessary for providing adequate and effective police services. That provision defines “infrastructure” to include “buildings.” Section 38 of the *Police Services Act* transfers the responsibility concerning “infrastructure” to a police services board, if one exists. I refer to *Re Goderich (Town)*, O.C.C.P.S., 27 October 1997, in which the Ontario Civilian Commission on Police Services (now the OCPC, “Commission”)

¹² *General*, R.R.O. 1990, Regulation 778.

¹³ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 16-17.

¹⁴ *Police Services Act*, R.S.O. 1990, c. P.15, s. 16.1[emphasis added].

¹⁵ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 33.

decided that the obligation under s. 4(3) of the *Police Services Act*, for a municipality to provide adequate and effective police services, required the Town of Goderich to maintain a police facility within the Town's boundaries. The Commission also noted that where there is a police services board, the board has the "obligation to ensure that the necessary staff, equipment and facilities are in place rests with the Board." Unlike s. 16.1 of the *Police Services Act*, sections 4 and 38 are mandatory provisions that require a municipality or a police services board to provide a basic level of infrastructure. With respect to Toronto Police Service divisional facilities, therefore, it is the Board that must ensure their adequacy and effectiveness.

As a facility designed for the detention "of persons detained for examination on a charge of having committed any offence," the PPC was a temporary detention facility as defined by s. 16.1 of the *Police Services Act*. The authority to build the PPC lay with the City of Toronto (subject to the approval of the Commission) and not with the Board or the Toronto Police Service.¹⁶ The Board, however, was responsible for ensuring that the PPC was "adequate and effective" and would fulfill its intended purpose during the G20 Summit.¹⁷

iv. Relevant legislation – Prisoner care and management

Distinct from the establishment and design of detention facilities is the manner in which prisoners are housed and managed while detained in those facilities. Both the *Police Services Act* and Board policy require the chief of police to establish procedures with respect to prisoner management.

Section 13(1)(l) of Ontario Regulation 3/99, *Adequacy and Effectiveness of Police Services* ("O. Reg. 3/99") requires a chief of police to establish procedures and processes with respect to prisoner care and control:

13. (1) Every chief of police shall establish procedures and processes in respect of,

.

(l) prisoner care and control;

Section 29 of O. Reg. 3/99 also requires every police services board to establish policies with respect to this subject:

29. Every board shall establish policies with respect to the matters referred to in section 3, subsections 4 (3) and 6 (3), section 8, subsection 9 (4), sections 10 to 17, 19, 20, 22, subsection 24 (2) and sections 25 to 28.

At the time of the G20 Summit, Board Policy LE-016, Prisoner Care and Control, required the Toronto Police Service to establish procedures and processes regarding prisoner care and control.

¹⁶ Based on the documents provided to the Review, I am not aware of a formal request to Toronto City Council under s. 16.1 of the *Police Services Act* to establish the PPC. However, Toronto City Council was fully aware of the Toronto Police Service's intention to establish the PPC as the City of Toronto was responsible for leasing the facility and provided the funds for the purchase of the necessary technical equipment. In addition, I am not aware of any request for approval from the OCPC.

¹⁷ *Police Services Act*, R.S.O. 1990, c. P-15, s. 4(3).

The Board policy did not, however, provide any further direction as to the content of adequate procedures or processes.¹⁸ The text of Board Policy LE-016 is reproduced here in full:

It is the policy of the Toronto Police Services Board with respect to prisoner care and control that the Chief of Police shall establish procedures and processes regarding prisoner care and control. (Sections 29 and 13(1)(l))¹⁹

At the time of the G20 Summit, there were several Toronto Police Service procedures that governed prisoner care and management, including Persons Brought in Custody; Booking Hall / Central Lock-Ups; Persons Detained in Custody; Meal Provision for Persons in Custody; and Property of Persons in Custody. I describe the normal booking process in the following section of this chapter.

C. THE PPC OPERATIONAL PLAN

The PPC Plan was a 185-page chapter that formed part of the Toronto Police Service G20 Operational Plan. The chapter, which is broken down into various sections, outlined the manner in which prisoners were to be processed and detained at the PPC, as well as the facilities and services that would be available to them, including access to counsel, medical care, and interpreters. In addition, the chapter provided a significant amount of logistical information and procedural guidelines for arrest and prisoner transportation. There are 15 appendices to the PPC Plan, which cover a range of subject matters including the “Court Services Custody Management Plan,” the “Property Bureau Plan,” and information concerning the teams responsible for transferring persons arrested by members of public order units to the PPC (“HOT teams”).

As I have mentioned, the PPC Planning Team also completed the PPC Business Case Analysis, which analyzed existing Toronto Police Service facilities, the anticipated requirements of the G20 Summit, and what alternatives were available to the Toronto Police Service for the processing of prisoners.

i. Plan objective

The PPC’s primary objective was to create one central location for the processing and investigation of prisoners arrested for offences related to the G20 Summit. Given the unique nature and scale of a G20 Summit, the PPC posed a unique planning and operational challenge. The PPC Plan defined its objective, in part, as follows:

The Prisoner Processing Centre is a unique entity as it does not fit within the definition of a “lock up.” This plan will ensure that the needs of prisoners are met by using already existing policies, procedures and regulations to ensure a safe and successful environment. There is (*sic*) no Adequacy and Effectiveness Regulations that govern lock

¹⁸ The Policy was amended and expanded upon in November, 2010.

¹⁹ Board Policy LE-016 – Prisoner Care and Control (approved October 26, 2000, amended June 18, 2009, and reviewed November 15, 2010).

ups, holding areas or cells. The Ministry of Community Safety and Correctional Services can only provide recommendations.²⁰

The OIPRD Report stated that the description – “a unique entity” – was deliberately used to allow the Toronto Police Service to rely on existing policies and procedures, which would not otherwise have applied.²¹ Chief Blair stated in his interview with the Review that the PPC Plan was intended to “capture the universe” of the procedures to be followed at the PPC and that it reflected existing Board policies and Toronto Police Service procedures. The Chief also stated that where the PPC Plan did not expressly address a particular issue or situation that arose, an existing Toronto Police Service procedure was to be used to “fill the gap.”²²

ii. Design of the PPC

While the PPC was unlike any existing Toronto Police Service facility, it was designed to operate in the same manner as a divisional facility. Therefore, it is useful to review briefly the typical process that unfolds when a person is arrested in Toronto.

After arrest, a person is transported to a Toronto Police Service divisional facility – a police station. There, the arrested person goes through the booking process under the supervision of the Officer in Charge, usually a Staff Sergeant. The booking process includes confirmation of the person’s identification, fingerprinting, completing an inventory of personal property, recording the details of the arrest, including the charge, and determining whether the person has specific medical needs that require attention. The booking process normally takes between 10 and 30 minutes to complete, depending on the particular circumstances. The decision is then made either to release or to detain the person for a bail hearing in a lock-up.

At the conclusion of the booking process, the person is either released or transferred to a lock-up, which I described earlier. If bail is denied, the person will be detained in a provincial detention facility before trial and will not normally return to a Toronto Police Service divisional facility.

The PPC was intended and designed to be a mass prisoner *processing* centre. Arrested persons were intended to go through the booking process and then either be released or transferred to a court facility. The PPC was never intended to be a *detention* centre, where prisoners would be held for extended periods of time, certainly not for more than 24 hours. The intention to design a prisoner processing centre led the PPC Planning Team to rely primarily upon existing policies and procedures that applied to Toronto Police Service divisional facilities. Those authorities shaped the PPC’s ultimate design and the manner in which prisoners were processed at the facility.

²⁰ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 31.

²¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 205.

²² Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 9.

a. Capacity

The PPC Plan did not provide for a maximum capacity for the PPC. The PPC Plan stated that the PPC was designed to process up to 500 hundred prisoners at a time but that the facility could house additional prisoners, if required:

The [PPC] is designed and organized to process up to 500 prisoners at any given time. However, the PPC does have the capability to take more than 500 prisoners if there is a demand.²³

The PPC Business Case Analysis provided some clarification. It stated that the PPC Planning Team intended that the PPC would be able to process – receive, book, investigate, and release – 500 prisoners within a 24-hour period:

[T]his report recommends that the PPC have capacity to process up to 500 people *per-day*.²⁴

[...] 12 booking lanes would allow for the parade (or entry) of 48 new arrests per-hour, with 500 new arrests taking approximately 10.42 hours to parade and lodge. The remaining time [within a 24-hour period] (approximately 50%) would be available for the release of these same people, or to oversee their dispatch to court.²⁵

The PPC Business Case Analysis, which surveyed the number of arrests at prior major events, concluded that a facility which could process 500 prisoners within a 24-hour period was “reasonable and prudent in light of the fact that past events have almost always involved large volumes of arrest.”²⁶ That capacity was considered sufficient to accommodate a “worst case scenario.”²⁷

Chief Blair stated in his interview with the Review that the capacity of the PPC was ultimately determined by the physical size of the building at 629 Eastern Avenue.²⁸ While the PPC was designed to accommodate comfortably up to 500 prisoners within a 24-hour period, it was capable of housing more than double that amount. The facility contained 51 bullpens: 9 in the pre-booking area, 36 in the main holding area, and 6 in the release/hold for court area.²⁹ The PPC Planning Team intended that each of the 51 bullpen cells would hold 10 prisoners but, in fact, the cells were designed to hold more than twenty prisoners. In total, and stretched to its maximum, the PPC was, therefore, capable of holding over 1,020 prisoners.³⁰

²³ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 31.

²⁴ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 17 [emphasis added].

²⁵ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

²⁶ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 17.

²⁷ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 17.

²⁸ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 14.

²⁹ Toronto Police Service Answers to Undertakings, No. 42 (21 February 2012).

³⁰ Toronto Police Service Answers to Undertakings, No. 42 (21 February 2012).

The OIPRD Report found that there was confusion among senior officers at the PPC during the G20 Summit as to whether the figure of 500 prisoners referred to the physical capacity of the PPC or to the number of prisoners to be processed within a given period.³¹

b. The prisoner booking process

The PPC Plan contained a broad overview of the planned booking process. It envisioned that Court Services officers would observe all prisoners as they were unloaded from Toronto Police Service wagons and would segregate prisoners with immediate medical or contamination concerns. If prisoners had been exposed to contaminants, such as pepper spray or CS gas (tear gas), prisoners would be removed from the screening area for decontamination. Prisoners would then be taken before an Officer in Charge (a Toronto Police Service Staff Sergeant) to undergo the booking process.

The PPC Plan did not address the details of the booking process to be followed at the PPC but it appears that the PPC Planning Team intended that the standard Toronto Police Service booking process would be used, which I have already described.³²

Certain changes were made to the standard divisional facility model in order to accommodate a high volume of prisoners. As I have mentioned, the PPC Planning Team was particularly concerned with the potential for delay in the booking process. In an attempt to minimize bottlenecks and the subsequent delays that would result, the PPC Plan provided for 12 booking trailers to process prisoners. This system was similar to that used by the Canada Border Services Agency at Canadian airports. Temporary pre-booking cells were constructed next to the booking trailers and were intended to hold prisoners only in the event that all of the booking trailers were occupied. The PPC Business Case Analysis estimated that 12 booking lanes would allow for the entry of 48 new arrests per hour, with 500 new arrests taking approximately 10.4 hours to be processed by the Officers in Charge. The remainder of the 24-hour period would be available for the release of the same prisoners or to oversee their transportation to court.³³

The PPC Plan provided that prisoners held in the pre-booking cells waiting to be brought before an Officer in Charge were to be kept in restraints. The PPC Business Case Analysis states that this was due to safety concerns.³⁴ However, no justification for the use of restraints was included in the PPC Plan itself, which also did not contain any alternative measures in the event that prisoners were kept in pre-booking cells for extended periods of time. This was an example of a standard Toronto Police Service procedure that was adopted for the PPC without adaptation. The PPC Business Case Analysis expressly contemplated sudden influxes of prisoners during the G20 Summit, and the subsequent impact on prisoners restrained in pre-booking cells.³⁵ While the PPC

³¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 205.

³² Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

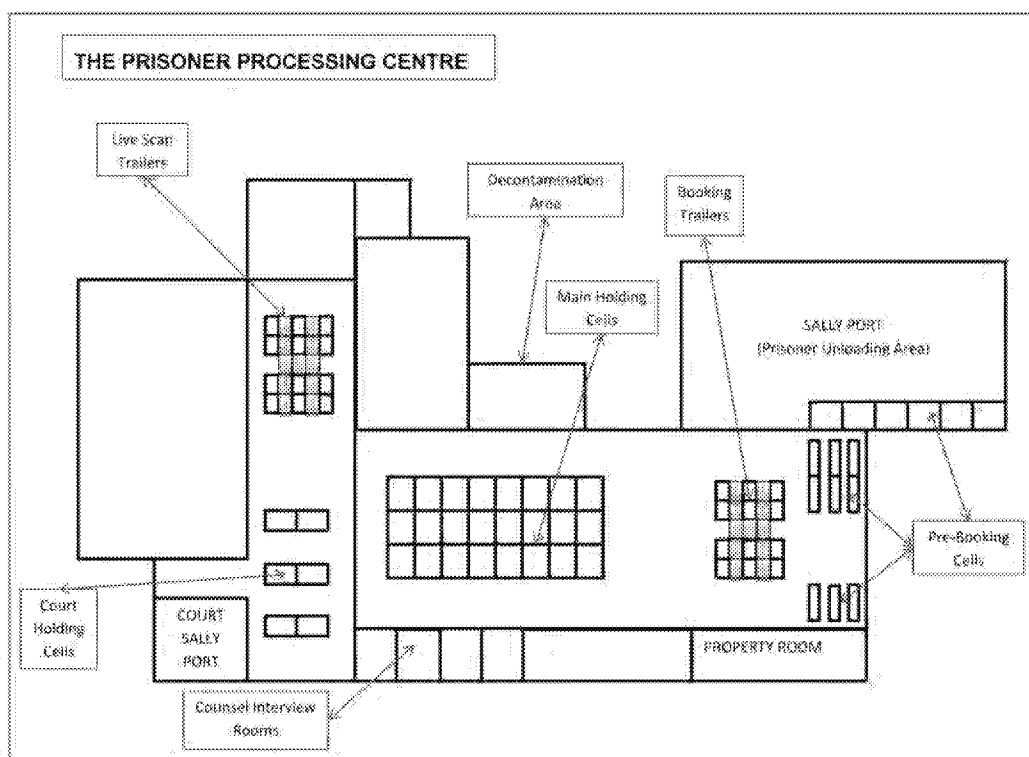
³³ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

³⁴ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

³⁵ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18

prisoner booking process was designed to prevent bottlenecks and avoid delays, it did not provide for alternate measures in the event that delays did occur.

After being brought before an Officer in Charge, prisoners were then intended to be placed in the main cell (or holding) area of the PPC until a decision was made by investigative officers as to whether they would be released or held for court. Following that determination, they would be moved to designated cells for release or transportation to court. The majority of prisoners were to be kept in the bullpen cells in the main cell area, which were intended to house up to 10 prisoners each. Twenty five individual cells were constructed for prisoners who might require segregation from the general population due to violence or mental health concerns. In addition, young people were to be “completely separated” from adult prisoners.³⁶ Prisoners were to be provided access to counsel, including duty counsel and medical care.³⁷



The PPC Plan did not contain a procedure for releasing prisoners or transporting them to a court facility. In particular, it did not contain a procedure for the release of persons arrested for breach

³⁶ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (March 3, 2010) at 33.

³⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (March 3, 2010) at 59 and 108.

of the peace.³⁸ The Toronto Police Service *After-Action Review* stated that the intention was for prisoners to be brought before a Staff Sergeant in one of the 12 booking trailers just before release. This is the process typically used for release of a prisoner at Toronto Police Service divisional facilities. It appears, therefore, that the PPC release process was another instance in which a Toronto Police Service standard procedure was required to fill a gap in the PPC Plan. As I shall discuss later in this chapter, the absence of a designated release procedure caused significant delays and other difficulties during the G20 Summit. I shall also discuss specific issues of prisoner care and management, including access to counsel and medical care.

c. Prisoner information tracking systems

The PPC Plan did not specify how prisoner information was to be recorded and tracked. The Toronto Police Service *After-Action Review* stated that the PPC Planning Team intended that the Criminal Information Processing System, used by the Toronto Police Service to track and record all information pertaining to a prisoner's arrest and detention in a police facility, would be used at the PPC.³⁹ That intention was not expressed in the PPC Plan.

The PPC Planning Team's intention did not materialize. During the G20 Summit, two separate systems were used to track prisoner information at the PPC. The Officers in Charge used the Criminal Information Processing System during the booking process. However, throughout the rest of the PPC, Court Service officers used a different system, which was similar to that used to record and track prisoner information at court facilities.⁴⁰ As opposed to the Criminal Information Processing System, which is a centralized, electronic system, Court Services designed a hard-copy prisoner tracking form that contained much of the same information required by the Criminal Information Processing System. This paper form, as well as a wristband, was intended to follow prisoners as they made their way through the PPC.⁴¹ The form was to be filled out by Court Services officers when prisoners were moved, fed, or used the telephone.

The failure to designate a particular prisoner information tracking system in the PPC Plan was a gap that allowed for more than one system to be used. Maintaining an accurate record of prisoner arrest and tracking information is vital to the integrity of the booking process. Such an important aspect should have been an express part of the PPC Plan and should not have been left to "gap filling."

³⁸ Breach of the peace is not an offence under the *Criminal Code*, R.S.C. 1985, c. C-46. It was originally a common law power that was codified by ss. 30 and 31 of the *Criminal Code* and permits a police officer who witnesses a breach of the peace to arrest "any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace."

³⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

⁴⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

⁴¹ Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

d. Back-up plan

The PPC Business Case Analysis contemplated that existing Toronto Police Service divisional facilities would be used as emergency back-up in the event of an evacuation of the PPC or a need to process greater than 500 arrests in one day.⁴² The PPC Plan similarly provided that “if the PPC becomes inoperable a back-up plan is in place to accommodate additional prisoners (separate ops plan).”⁴³ However, the PPC Plan did not contain a separate back-up plan. It also did not address the circumstances in which a back-up plan would be implemented or how it would operate, including which Toronto Police Service divisional facilities would be used or how prisoners would be distributed between them.

Chief Blair confirmed in his interview with the Review that the back-up plan was simply to use divisional facilities and to process prisoners in accordance with standard Toronto Police Service procedures.⁴⁴ Given the anticipated volume of arrests, the Toronto Police Service should have ensured that a fully developed back-up plan was in place before the G20 Summit. For example, had the Toronto Police Service been required to evacuate the PPC, there would have been no guidance to determine where and how prisoners would be moved and how their information would be tracked and recorded.

iii. Shortfalls in the PPC Plan

The PPC Plan did not contain processes and procedures specifically designed for the unique facility. The result was an incomplete and inconsistent plan that did not provide adequate guidance to the officers who were responsible for operating the PPC during the G20 Summit.

a. Reliance on existing processes and procedures

As I have said, the PPC Planning Team perceived the PPC as simply a large-scale Toronto Police Service divisional facility. In designing the PPC, therefore, the PPC Planning Team focused almost exclusively on standard Toronto Police Service processes and procedures used at divisional facilities.

The focus on Toronto Police Service procedures led the PPC Planning Team to disregard other potential sources of relevant expertise, including the provincial Ministry of Community Safety and Correctional Services. The Policing Standards branch of the Ministry of Community Safety and Correctional Services is responsible for the Policing Standards Manual, which explains in detail the standards police services in Ontario must follow and provides guidelines on how to follow those standards. In addition, the Correctional Services branch of the Ministry of Community Safety and Correctional Services is responsible for designing and operating Ontario’s adult correctional facilities. In particular, it is responsible for establishing and regulating Ontario’s jails and detention centres, which serve as the entry point into the prison system.

⁴² Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 22.

⁴³ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 32.

⁴⁴ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 21.

The PPC Planning Team should have taken advantage of the Ministry of Community Safety and Correctional Services' resources. The Policing Standards and the Correctional Services branches of the Ministry possessed expertise that was directly relevant to the construction and design of the PPC, and to prisoner care and management. This expertise would have proved invaluable in designing a unique prisoner processing facility and may have eased the difficulties caused by the limited planning period. A member of the PPC Planning Team noted in a debriefing memorandum written after the G20 Summit that additional, experienced personnel should have been consulted in regard to the design of the PPC and the procedures developed for the operation of the facility.⁴⁵

I agree that the need for relevant expertise was particularly important in the case of the PPC. It was a unique facility, the scale of which was unprecedented in the Toronto Police Service's history. As a detention facility, it was vital that the planned processes and procedures would meet existing legal standards, and that prisoners' rights would be ^{protected} throughout their detention. Any problems encountered would potentially affect a large number of prisoners. The Toronto Police Service, therefore, should have made use of all available resources.

Recommendation No. 31: Early involvement of major event planning specialists and relevant experts

The Board should create a policy governing circumstances where the Toronto Police Service is required to design and plan for a unique operational requirement, such as the PPC. The Board's policy should require that the chief of police ensure that major event planning specialists and other relevant experts are engaged to assist the Toronto Police Service with the development of operational plans and the design of specific processes associated with the operational plans. The event specialists should have a background and experience in planning for and overseeing large-scale security operations. Experts include relevant government ministries, agencies, and legal advisors. The input of planning specialists and experts should be solicited at the earliest possible opportunity.

b. No adaptation of standard processes and procedures

One of the most significant shortfalls in the PPC Plan was its wholesale incorporation of standard Toronto Police Service procedures. The PPC Plan contained a general overview of the manner in which prisoners would be received, processed, and managed at the PPC. As I have mentioned, certain changes were made to the divisional facility model to accommodate a high volume, the most significant of which was the inclusion of 12 booking lanes. It did not, however, contain any detailed PPC-specific processes and procedures. In most instances, standard Toronto Police Service procedures were adopted without adaptation.

⁴⁵ Internal Toronto Police Service e-mail (14 July 2010).

The OIPRD Report stated that standard Toronto Police Service procedures were used to save time. By using existing procedures, the PPC Planning Team did not have to develop PPC-specific procedures, for which additional training would also have been required.⁴⁶

Despite the time constraints under which the PPC Planning Team was operating, it was not sufficient to rely on existing procedures. Procedures prescribe the precise manner in which prisoners are to be managed. They are detailed directions that are designed to accommodate particular circumstances. Standard Toronto Police Service procedures were designed to meet the day-to-day demands of a divisional facility. Similarly, Court Services unit-specific procedures and policies were designed to address the specific requirements of holding cells in court facilities. Neither was designed to accommodate the unique operational requirements of a mass detention facility, particularly the high volume of prisoners. For example, the standard Toronto Police Service booking process was designed to accommodate a single person,⁴⁷ and a unit-specific directive concerning prisoner management following a mass arrest contemplated a maximum of 76 prisoners being booked at one facility.⁴⁸ Conversely, the PPC Plan planned for the processing of 500 prisoners within a 24-hour period.

Moreover, the PPC Plan was unclear as to whether the standard Toronto Police Service procedures and Court Services unit-specific policies applied *in addition* to the process contained in the PPC Plan, or whether they only applied in the event of a *gap* in the process. In either case, the PPC Plan contained no direction on which of the procedures or policies would apply or the circumstances that would trigger their application. The lack of such direction should have been addressed at the planning stage, as the PPC was to be commanded and predominantly run by Court Services officers who would not necessarily have been familiar with the Toronto Police procedures listed in the PPC Plan, and would not have known which procedures were required to fill a particular gap.

The reference in the PPC Plan to both Toronto Police Service procedures and Court Services unit-specific policies also made the PPC Plan internally inconsistent. The prisoner booking process was outlined in two places: the PPC Plan itself and the Court Services Custody Management Plan (Appendix 1 to the PPC Plan). The PPC Plan outlined the process by which prisoners would be received, booked, housed, and released from the PPC. It also listed certain standard Toronto Police Service procedures, including “Persons Brought into Custody,” “Booking Hall / Central Lock-ups,” “Persons Detained in Custody,” and “Property of Persons in Custody.” On the other hand, the Court Services Custody Management Plan contained an abbreviated version of the process outlined in the PPC Plan and also contained a list of separate Court Services unit-specific policies, including “Prisoner Management,” “Prisoner Classification,” and “Property.” In his interview with the Review, Chief Blair confirmed that Court Services unit-specific policies are

⁴⁶ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 205.

⁴⁷ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

⁴⁸ Toronto Police Service, “52 Division Unit Directive # 5 – Prisoner Management – Mass Arrest” (undated).

different from Toronto Police Service procedures, particularly with respect to prisoner management and prisoner tracking.⁴⁹

On its face, therefore, the PPC Plan allows for two different, potentially conflicting processes to be applied to the same situation. To the extent the listed Toronto Police Service procedures and Court Services unit-specific policies were inconsistent, the PPC Plan failed to provide adequate direction. To constitute a complete procedural document, the PPC Plan should have addressed all aspects of the prisoner care and management clearly.

Recommendation No. 32: Complete operational plan

Where the Toronto Police Service has created an operational plan for a major event, the Board should seek confirmation that the operational plan constitutes a complete document that addresses all potentially applicable policies and procedures. Further, where different units within the Toronto Police Service have different procedures that relate to the same matter, the Board should seek confirmation regarding how the Toronto Police Service has reconciled these different procedures.

Recommendation No. 33: Procedures concerning mass arrest and detention

The Board should make a policy that directs the chief of police to create an operational plan for a temporary mass prisoner processing centre, if such a facility is required at major events held in Toronto. The plan should address the design and processes for the facility, including procedures concerning prisoner care and management.

The Ministry of Community Safety and Correctional Services should be consulted with respect to the development of this operational plan.

D. THE BOARD'S INVOLVEMENT

In *Chapter 2 – Civilian Oversight in Policing*, I recommend a three-part consultation protocol that should be applied in the Board's interactions with the chief of police. The Board's lack of involvement in the design and planning for the PPC highlights, in particular, the importance of the first and third elements of that protocol – the need for effective information exchange between the Board and chief of police, and the Board's role in helping to define the objectives and priorities of a unique operation.

⁴⁹ Review's Interview with Chief William Blair (22 November 2011, Toronto) at 10.

i. Information provided by the Toronto Police Service to the Board

a. January 21, 2010 Board Meeting

The only formal briefing the Board received from Chief Blair concerning the PPC was at the January 21, 2010 closed Board meeting. At that meeting, the Board received information from Chief Blair with respect to the overall impact on the Toronto Police Service of policing the G20 Summit. One of the matters discussed was the need for a G20 Summit-specific prisoner processing centre.⁵⁰ The Board was informed that existing Toronto Police Service infrastructure was insufficient to handle the anticipated number of arrests. Chief Blair noted, in particular, that the primary concern was the lack of existing cells and bullpens to hold a large influx of prisoners. He added that a sudden and large influx of prisoners would cause bottlenecks and significant delays.⁵¹

The information provided to the Board concerning the PPC was described in the Board minutes as follows:

Prisoner Processing Centre (PPC): Existing Toronto Police Service infrastructure is insufficient for the handling of a large number of arrested persons. There are not enough cells and bullpens to hold a large influx of prisoners, and bottlenecks will tie up officers, trucks and investigators. There is a legal requirement to process prisoners in a timely manner (e.g., individuals cannot be left in prisoner transportation vehicles for any extended period of time, and should be brought before a Justice within 24 hours). The Service must acquire a facility of sufficient size to manage these requirements. Costs associated with the PPC include securing a facility, equipping the facility with video and Information Technology (IT) equipment as per current standards, and constructing cell areas for containment of prisoners. Acquisition of related equipment must begin by February to ensure the facility can be prepared in time for the event.⁵²

The minutes stated that the Board was only briefed with respect to financial matters: the cost of acquiring an additional facility, the cost of equipping the facility with the video and information technology equipment required, and the cost of constructing cells to house prisoners. The primary concern was that the acquisition of necessary equipment had to begin by February 2010 to ensure that the PPC would be operational in time for the G20 Summit. While the Board was briefed on the acquisition of a facility, it had no involvement in the leasing of 629 Eastern Avenue. As I have mentioned, the process of procuring and paying for the facility was handled entirely by the City of Toronto.⁵³

⁵⁰ Toronto Police Services Board Minutes (21 January 2009) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meetings – Impact on the Toronto Police Service” at 4.

⁵¹ Toronto Police Services Board Minutes (21 January 2009) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meetings – Impact on the Toronto Police Service” at 4.

⁵² Toronto Police Services Board Minutes (21 January 2009) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meetings – Impact on the Toronto Police Service” at 4.

⁵³ Review’s Interview with Board Staff and Legal Counsel (31 August 2011, Toronto) at 68.

At the January 21, 2010 meeting, the Board was not provided with any information concerning the proposed design or operation of the PPC. The briefing did not include anything with respect to the manner in which the PPC would be designed or the prisoner care and management procedures that would be followed. I note that the Toronto Police Service had only recently learned that the G20 Summit would be held in Toronto and the PPC Business Case Analysis was not completed until March 2010, a month later.⁵⁴

b. Informal briefings

Following the January 21, 2010 meeting, the Board did not receive any further formal briefings from the Chief concerning the PPC. Board members in their interviews said that they asked the Chief questions concerning the PPC during subsequent Board meetings.⁵⁵ The answers to those questions constituted the extent of the additional information that was provided to the Board.

With respect to the PPC, the Board did not ask the Chief questions that would have elicited any meaningful information. In advance of the G20 Summit, Board members sought only general assurances from the Chief that existing Board policies and Toronto Police Service procedures with respect to prisoner care and management would apply.⁵⁶ The responses provided were equally general: the Board was told, simply, that it would be “business as usual.”⁵⁷

c. PPC planning materials

The Board did not see any of the PPC planning materials, including the PPC Plan and the PPC Business Case Analysis.⁵⁸ Chief Blair made clear during his interview that, in his opinion, the details of the design of the PPC, including the PPC Plan, were “operational in nature” and were not properly a matter for the Board to consider.⁵⁹ In his opinion, the *Police Services Act* entitled him to refuse any request for “operational” information made by the Board.⁶⁰

⁵⁴ I also address the information provided to the Board by the Chief in *Chapter 6 – Toronto Police Services Board’s Knowledge of G20 Summit Matters*.

⁵⁵ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 60; Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 178; Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 198.

⁵⁶ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 57; Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 178.

⁵⁷ Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 30.

⁵⁸ Review’s Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 63; Review’s Interview with Hamlin Grange (8 September 2011, Toronto) at 178; Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 203; Review’s Interview with Judi Cohen (12 September 2011, Toronto) at 197; Review’s Interview with Councillor Frank Di Giorgio (29 August 2011, Toronto) at 122.

⁵⁹ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 7.

⁶⁰ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 7.

d. Tour of the PPC

Board members were given an opportunity to tour the PPC two days before the beginning of the G20 Summit, after the facility had begun operations. The invitation was extended at very short notice and only Chair Mukherjee attended the tour, which was given by the PPC Incident Commander.⁶¹ In his interview, Chair Mukherjee stated that he was given a “full tour and a detailed explanation of how the detention centre [would] operate from the point of intake to release.”⁶² He also stated that, while he was not conducting a formal evaluation or assessment of the facility, he was particularly interested to confirm that certain protections were in place, including access to counsel and medical care, adequate space, separation of male and female prisoners, and adequate systems to record prisoner information. At the time, Chair Mukherjee was satisfied that adequate protections were in place and he did not raise any concerns with Chief Blair or any other member of the Toronto Police Service.⁶³

By that time, it was too late in the process for the Chair, on behalf of the Board, to provide any meaningful feedback concerning the PPC. The tour took place two days before the beginning of the G20 Summit, after the PPC had begun operations and was receiving prisoners.⁶⁴ The upgrades to the facility had been completed, all of the requisite equipment had been purchased, and the officers operating the PPC had received their training. In order for the Chair or the Board to conduct their own evaluation into the adequacy and effectiveness of the PPC, they would have needed, at least, to review the PPC Plan and the Board policies that were integrated into the Plan before taking any tour. A tour by a Board member without having reviewed this basic material was of little value.

e. Meaningful information exchange

The lack of substantive information flowing from the Toronto Police Service to the Board concerning the PPC meant that the Board was unable to provide any meaningful oversight. As I discussed in *Chapter 1 – Legislation that Governs the Toronto Police Services Board and the Toronto Police Service* and in *Chapter 2 – Civilian Oversight in Policing*, one element of effective civilian oversight is an information exchange whereby the Board receive adequate, relevant, and useful information about policing matters, which can then serve as a starting point for a consultation with the chief of police about a particular matter. The case of the PPC illustrates this point. The Board could not provide the Chief with any meaningful input with respect to policy matters or otherwise because it did not have any information.

The responsibilities of both the Board and the Toronto Police Service under the *Police Services Act* required both of them to act. The Board should have asked the Chief about the specific manner in which its policies would be implemented at the PPC. The simple reassurance that it

⁶¹ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 136.

⁶² Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 137.

⁶³ Review’s Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 137-8.

⁶⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 18.

was “business as usual” was not sufficient.⁶⁵ It was not “business as usual.” The PPC was a unique facility. It was also a mass detention facility, which meant that any deficiency in its design or its operational plan would likely affect a significant number of people. Prisoner care and management was a matter that the Board had paid particular attention to in the past, including, for example, creating policies concerning the detention of transsexual and transgendered persons.⁶⁶ For all of these reasons, the Board should not have been satisfied with general assurances that relevant policies were being properly integrated into the PPC Plan. Those assurances should have provoked further questions about the specific manner in which existing policies and procedures would be implemented, and whether they would be sufficient for the purposes of a unique, mass detention facility.

The Toronto Police Service also had a role in ensuring that the Board had relevant information about the PPC. While the Board did not ask for specific documents or material, it did not even know of the existence of a specific PPC Plan or Business Case Analysis. The Chief should have provided the Board with the information it would need to undertake an informed review of the facility’s design and the manner in which prisoners would be treated. The Board could not ask questions about information about which it was unaware.

Recommendation No. 34: Board guidance on unique operational requirements

In situations where the Toronto Police Service must plan for a unique operational requirement, like the PPC, the Board should ensure that adequate and complete policy direction is in place. The Board must ensure it is provided with relevant information, including operational information, to enable it to decide if its existing policies are adequate and to engage in an informed consultation with the chief of police.

ii. Steps taken by the Board

Under section 31(1) of the *Police Services Act*, the Board was responsible for the provision of an adequate and effective PPC for the G20 Summit policing. It was clear from the outset of the planning process that a mass prisoner processing centre was required because the existing Toronto Police Service infrastructure was inadequate for the purposes of policing the G20 Summit. This was the express reason, given to the Board by Chief Blair at the January 21, 2010 Board meeting, as to why an entirely new facility was required.⁶⁷ Despite the significance of this acquisition and the importance of this facility for policing of the G20 Summit, the Board took no steps beyond general enquiries of the Chief to ensure that the PPC was adequate for the unique situation it was intended to address. As I have discussed, the Board did not request any substantive planning

⁶⁵ Review’s Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 30.

⁶⁶ Board Policy – Search and Detention of Transgendered People approved (15 June 2006) amended (16 April 2009) reviewed (15 November 2010).

⁶⁷ Toronto Police Services Board Minutes (21 January 2009) (Closed Meeting), Item #C6, “2010 G8 and G20 Summit Meetings – Impact on the Toronto Police Service” at 4.

information or documents. It also took no steps to review existing policies and procedures to ensure that they were adequate for the purposes of a unique mass detention facility. As a result, the Board had no means of independently confirming that its policies concerning prisoner care and management, which I shall discuss next, would be appropriately integrated into the PPC's operation.

a. No review of existing Board policies

At the time the G20 Summit took place, there were three Board policies that applied to the PPC: Board Policy LE-016 – Prisoner Care and Control; Board Policy LE-012 – Search of Persons; and Board Policy – Search and Detention of Transgendered People.⁶⁸

Board Policy LE-016 – Prisoner Care and Control provided simply that “[it] is the policy of the [Board] with respect to prisoner care and control that the chief of police shall establish procedures and processes regarding prisoner care and control.”⁶⁹

The two policies concerning searches were more detailed. The text of Board Policy LE-012 – Search of Persons and Board Policy – Search and Detention of Transgendered People is reproduced in full here:

TPSB LE-012 Search of Persons

It is the policy of the [Board] that the Chief of Police shall establish procedures and processes regarding search of persons that address:

the compliance by members of the police service with legal and constitutional requirements relating to when and how searches of persons are to be undertaken;

the circumstances in which an officer may undertake a search of person;

frisk/field searches;

strip/complete searches;

body cavity searches;

consent searches;

the supervision of searches of persons; and

the documentation of searches of persons.⁷⁰

⁶⁸ Board Policy – Prisoner Transportation (approved 26 October 2000, amended 15 November 2010) was not directly relevant to the manner in which prisoners were managed at the PPC.

⁶⁹ Board Policy LE-016 – Prisoner Care and Control approved (26 October 2000) amended (18 June 2009) reviewed (15 November 2010).

⁷⁰ Board Policy LE-012 – Search of Persons (approved 23 November 2000, reviewed and amended 15 November 2010).

Search and Detention of Transgendered People

It is the policy of the [Board] that the Chief of Police will ensure that when dealing with transgendered or transsexual individuals, officers will be sensitive to human rights, privacy issues and the stated preference as to gender identification of the individual being searched, and will use gender-appropriate pronouns, without jeopardizing officer safety and the need to search.⁷¹

The one source of information to which the Board had unlimited access was its own policies. The Board, however, did not review these policies before the G20 Summit to determine whether or not they would be sufficient for the unique event and it did not discuss them in any detail with the Chief.⁷² The Board expressed a general concern to the Chief during Board meetings that its existing policies be applied during the G20 Summit,⁷³ but did not engage in a detailed consultation of whether there was a policy gap that required amendments to existing policies, or the creation of new policies.⁷⁴

For example, before the G20 Summit, there was no Board policy concerning mass detention. Other than divisional lock-ups, the Toronto Police Service did not operate detention centres and certainly did not operate a mass prisoner processing facility. In addition, the Board was informed by the Chief that a unique mass detention centre was required to police the G20 Summit properly and that existing facilities were insufficient.

The Board should have taken the initiative to review its own policies to determine whether the objectives set out in those policies were adequate for the unique demands of the PPC. I find that the absence of a Board policy concerning mass detention was a gap that should have been identified by the Board. Moreover, the absence of such a policy allowed the PPC Planning Team to employ existing Toronto Police Service procedures without adaptation. A policy concerning mass detention would have required the Toronto Police Service to create unique processes and procedures, which were required for the facility to run properly.

⁷¹ Board Policy – Search and Detention of Transgendered People (approved 15 June 2006, amended 16 April 2009, reviewed 15 November 2010).

⁷² Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 129.

⁷³ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 135.

⁷⁴ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 135.

Recommendation No. 35: Creation of a Board Policy on mass detention

Mass detention centres to be used at large policing events pose unique policy concerns and operational demands, and bears on the rights of a large number of prisoners. For these reasons, the Board should develop a specific policy pertaining to mass detention that highlights the specific procedural matters the chief of police should address in a related Toronto Police Service procedure on mass detention. The Board should also consult with legal and policy advisors to create a policy that is in accordance with current Canadian legal standards.

b. No review of existing procedures and the PPC Plan

Beyond examining its own policies, it was incumbent upon the Board to determine how those policies would be implemented at the PPC. In order to do so, however, the Board required access to all relevant information, including Toronto Police Service procedures and operational plans.

Before the G20 Summit, the Board did not know about the PPC Plan. It did not, therefore, request to see the PPC Plan, to receive a summary of the PPC Plan, or to receive a substantive briefing on prisoner care and management at the facility.⁷⁵ In addition, the Board did not request to review the Toronto Police Service procedures upon which the PPC Plan was based, and did not ask Chief Blair about the contents of those procedures, or whether he considered them sufficient for the unique demands of the PPC.⁷⁶

Chair Mukherjee stated in his interview that, in general, the Board does not review Toronto Police Service procedures and that he simply expected that the Chief would comply with Board policies.⁷⁷ However, other Board members said that there was no prohibition on the Board reviewing Toronto Police Service procedures and, in fact, that the Board had engaged in this review in specific instances.⁷⁸ For example, the Board reviewed a draft Toronto Police Service procedure when considering the issue of Conductive Energy Weapons (TASERS).⁷⁹

⁷⁵ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 135; Review's Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 63; Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 178; Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 203.

⁷⁶ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 132; Review's Interview with Councillor Adam Vaughan (16 September 2011, Toronto) at 63; Review's Interview with Councillor Pam McConnell (13 September 2011, Toronto) at 203.

⁷⁷ Review's Interview with Chair Alok Mukherjee (22 September 2011, Toronto) at 131-132.

⁷⁸ Review's Interview with Hamlin Grange (8 September 2011, Toronto) at 174; Review's Interview with Judi Cohen (12 September 2011, Toronto) at 195.

⁷⁹ I discussed the example of TASERS in *Chapter 2 – Civilian Oversight in Policing*.

In addition, one Board member stated in the course of her interview that the design of a detention centre was beyond the Board's "body of knowledge" and that Board members were more concerned with making sure that Board policies were being integrated into the plan for the PPC.⁸⁰

In my view engaging in a review of the Toronto Police Service procedures used to design the PPC was the most effective way for the Board to satisfy itself that its policies were being applied. It was also a means of identifying potential policy gaps in the design of the facility, which it may not have identified from reviewing Board policies alone. The Board may have had little to recommend with respect to the physical design of the PPC (the structural upgrades or the technical requirements) or the more technical operational elements of the PPC Plan. It was capable, however, of determining whether or not the PPC Plan adequately addressed an objective contained in a Board policy. This is a function that lies at the heart of the Board's statutorily mandated role.

The care and custody issues of transgendered and transsexual prisoners is one illustration that highlights why the Board should have been involved in identifying gaps in the PPC Plan. Board Policy - Search and Detention of Transgendered People was one of only three Board policies in existence at the time of the G20 Summit that applied to the PPC.⁸¹ During her interview, one Board member indicated that she wanted to ensure that there was adherence to the Board's policy on the lodging of transgendered and transsexual prisoners.⁸² However, the section of the PPC Plan that concerned the lodging of prisoners did not include any reference to transgendered and transsexual prisoners.⁸³ This is an illustration of why Board review of the PPC Plan was necessary.

The Board should have requested a substantive briefing from the Chief on the Toronto Police Service's plans for prisoner management at the PPC, including the procedures incorporated into the PPC Plan. Procedures and operational plans are the method through which Board policies are put into practice and are the primary source of substantive information about how its policies and objectives are intended to be implemented. The Board's failure to review the Toronto Police Service's plans for the PPC meant that it could not determine whether its policies were being implemented.

E. THE PPC IN OPERATION

Paragraph 8 in the Terms of Reference, set out at the beginning of this chapter, has two questions with respect to the operation of the PPC during the G20 Summit: (1) were there any difficulties in the implementation of the policies and principles used to design the PPC? and (2) was the PPC adequate with respect to those policies and principles? The preamble to the Terms of Reference includes a paragraph that prohibits the expression of "any conclusion or recommendation

⁸⁰ Review's Interview with Councillor Pam McConnell (13 September, 2011, Toronto) at 198.

⁸¹ Board Policy – Search and Detention of Transgendered People (approved 15 June 2006, amended 16 April 2009, reviewed 15 November 2010).

⁸² Review's Interview with Councillor Pam McConnell (13 September 2011) at 201.

⁸³ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 107-8.

regarding the civil or criminal responsibility of any person or organization” and the “interfering in any ongoing criminal, civil or other legal proceedings.”

Based on my review of the record, I shall describe the manner in which the PPC was run and the difficulties experienced at it during the G20 Summit without transgressing the prohibitions in the preamble to the Terms of Reference.

i. Command of the PPC

The PPC was operated primarily by Court Service officers.⁸⁴ Court Services is a unit within the Toronto Police Service that is responsible for prisoner care and management at court facilities, including the transportation of prisoners in specialized wagons between court locations, Toronto Police Service divisions, and provincial correctional facilities, as well managing court documents. Court Services officers are not police officers, but are either civilian members of the Toronto Police Service or are appointed special constables. Court Services does not follow standard Toronto Police Service procedures. Instead, it has its own unit-specific policies, which are developed by the Toronto Police Service and are not reviewed by the Board. Board Policy LE-014 – Court Security provides that the Chief “will establish procedures that address supervision and training, as related to court security.”⁸⁵ The policy does not contain a requirement that the Chief report to the Board on a periodic basis concerning court services and court services procedures.⁸⁶

Although Court Services officers staffed the majority of the positions at the PPC, some positions were staffed by Toronto Police Service police officers.⁸⁷ For example, Toronto Police Service Staff Sergeants were responsible for booking prisoners.⁸⁸ Toronto Police Service officers were also responsible for conducting criminal investigations regarding those being detained at the PPC and for managing prisoner property.⁸⁹

The PPC was under the command of a Court Services Superintendent (“PPC Incident Commander”) and a Court Services Staff Inspector, who reported directly to the Investigative Commander in the Major Incident Command Centre (“MICC”). The PPC Incident Commander’s roles and responsibilities, as contained in the PPC Plan, included reporting directly to the MICC; providing briefings and updates concerning all operations of the PPC; providing leadership to all officers at the PPC to ensure personnel remain professional; maintaining operational command of the PPC during the G20 Summit; implementing the operational site plan; and liaising with other stakeholders, including the Ministry of the Attorney General, Ministry of Community Safety and

⁸⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 44.

⁸⁵ Board Policy – Court Security approved (26 October 2000) amended (15 November 2010).

⁸⁶ Board Policy – Court Security approved (26 October 2000) amended (15 November 2010).

⁸⁷ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45.

⁸⁸ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

⁸⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45, 49-50.

Correctional Services.⁹⁰ The PPC Incident Commander was ultimately responsible for all operations and the delivery of police services at the PPC.

ii. Transition from planning to operational phases

The renovation of the PPC was completed shortly before it began operations on June 18, 2010 and the transition from the planning phase to the operational phase took place over only a matter of days.⁹¹ This meant that there was very little time to train the officers who were to staff the PPC and to ensure they were familiar with the processes and procedures contained in the PPC Plan. The short transition process was particularly significant because the PPC Plan was designed primarily by Toronto Police Service officers, but was to be implemented primarily by Court Services officers.

The OIPRD Report found that Court Services and Toronto Police Service officers deployed to the PPC received very little training in advance of the G20 Summit.⁹² The training was limited to an orientation weekend conducted on June 16 and 17, 2010 and a series of mock exercises that took place during the week of June 18, 2010, after the PPC had officially begun operations.⁹³ In particular, the report found that the training received by Court Services officers was very general and involved only setting expectations and reviewing existing policies and procedures.⁹⁴

As I explained earlier in this chapter, the PPC Plan was designed to operate like a Toronto Police Service divisional facility and incorporated both Toronto Police Service procedures and Court Services unit-specific policies. There are differences between the Toronto Police Service procedures and Court Services unit-specific procedures.⁹⁵ These differences, if not addressed adequately during training, could cause confusion for those at the PPC. For example, the standard Toronto Police Service booking process is different from the process that prisoners are subject to on arrival at a court facility.⁹⁶ Similarly, only a limited number of Court Services officers would have used the Criminal Information Processing System because Court Services officers use a different system to track prisoner information at court facilities. To the extent that Toronto Police Service procedures were integrated in the PPC Plan, Court Service officers would not necessarily have been familiar with the processes and procedures they were required to implement.

⁹⁰ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 47.

⁹¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 44; Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 206.

⁹² Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 206.

⁹³ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 206.

⁹⁴ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 206.

⁹⁵ Review's Interview with Chief William Blair (22 November 2010, Toronto) at 16.

⁹⁶ Review's Interview with Chief William Blair (22 November 2010, Toronto) at 16.

iii. Changes to the PPC Plan

A principal cause of the problems encountered at the PPC during the G20 Summit was the introduction of changes to the prisoner management processes immediately before and during the G20 Summit. Court Service officers' unfamiliarity with Toronto Police Service procedures, the lack of training given to all officers deployed at the PPC, and the lack of a detailed PPC Plan, led the PPC command and individual Court Services supervisors to impose different procedures at the PPC. These procedures were similar to those normally used by Court Services. This combination of procedures caused serious difficulties in the operation of the facility.

Notwithstanding Court Services' involvement in the planning process, the PPC Incident Command imposed three changes to the prisoner booking and management process at the PPC just before the G20 Summit began:

- The introduction of a single pre-booking officer, who was required to interact with each prisoner that entered the PPC;
- The introduction of additional prisoner information tracking systems; and
- The division of the PPC into four autonomous zones, each under the command of a Court Services Supervisor.⁹⁷

Collectively, these changes significantly impeded the flow of the prisoners through the PPC and their ultimate release and, also, the collection of prisoner information and property. As a result, those detained at the PPC were subject to significant delays in the amount of time it took to process and, consequently, release them.

No action was taken and no orders were given to prevent or reverse the changes made to the PPC procedures that were causing these delays. In the following section, I shall discuss in greater detail each of these three changes and the resulting impact they had on the operation of the PPC.

a. Pre-Booking Officer

The insertion of a pre-booking officer was a significant cause of much of the delay experienced at the PPC. It created an extreme bottleneck, which was precisely the situation the PPC Planning Team had attempted to avoid.⁹⁸

The PPC Business Case Analysis highlighted bottlenecks and consequential delays as a principal reason why existing Toronto Police Service facilities were not sufficient and why a mass prisoner processing centre was required. In addition, it noted that bottlenecks create a ripple effect as arrested persons waiting to be booked have to wait in a secure detention space. This, in turn, impedes operations at earlier stages as officers and prisoner transportation vehicles become tied-

⁹⁷ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45-47; Review's Interview with Chief William Blair (22 November 2010, Toronto) at 18-19.

⁹⁸ Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

up, unable to leave prisoners at a prisoner processing facility because the secure detention spaces used to hold individuals before they are booked fill up. During a major event, such as the G20 Summit, bottlenecks and delays can affect the greater police operation as resources become unduly taxed.

Despite the PPC Planning Team's attempts to avoid bottlenecks, Court Services inserted an additional procedural layer before prisoners entered one of the booking lanes. This pre-booking process was being conducted by a single Court Officer who was required to record certain information on a spreadsheet, organize arrest information, and photocopy this paperwork for each and every prisoner that entered the PPC.⁹⁹ As could be expected, this caused an extreme bottleneck and significant delays in the intake of prisoners. These delays were exacerbated by the large influxes of prisoners on the evening of June 26. Although the delays were readily apparent, a second pre-booking officer was not added until the evening of Sunday, June 27, close to the time the G20 Summit came to an end.

b. Additional Tracking System

The PPC Planning Team intended that the Criminal Information Processing System would be used to track prisoners in the PPC, although the PPC Plan does not express this intention.¹⁰⁰ Regardless, the PPC Incident Commander determined that an additional tracking system was required.¹⁰¹ That system was similar to one used at court facilities and simply entailed recording prisoner information on a hard-copy spreadsheet and multiple tracking forms, including a wrist band that contained a prisoner tracking number.¹⁰² The spreadsheet and forms were intended to follow a prisoner through the facility.

Under the additional tracking system, an initial spreadsheet was to be filled out for each prisoner by the Pre-Booking Officer before the prisoner was seen by an Officer in Charge ("pre-booking spreadsheet").¹⁰³ The pre-booking spreadsheet was intended to state the time a prisoner entered the PPC and arrest information contained in a separate document filled out by the arresting officer at the scene of the arrest ("HOT sheet"). The HOT sheet included the identity of the arresting officer and the charge on which the individual was arrested. Much of this information was a duplication of the information recorded during the booking process and contained in the Criminal Information Processing System.¹⁰⁴ The Toronto Police Service *After-Action Review* stated that it took approximately one minute per prisoner to enter the information into the pre-booking spreadsheet.¹⁰⁵ In addition, Court Services required extra copies of a prisoner's HOT sheet to

⁹⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

¹⁰⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

¹⁰¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

¹⁰² Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

¹⁰³ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

¹⁰⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

¹⁰⁵ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 47.

append to subsequent spreadsheets that were used to track a prisoner's movements while in the PPC.¹⁰⁶

This additional process added to the extreme bottleneck as large influxes of prisoners began arriving at the PPC and led to greater delays in prisoners being booked and lodged in the main holding cells. It also increased the opportunities for information to be recorded inaccurately. For example, the Toronto Police Service *After-Action Review* stated that as part of the pre-booking process, officers unloading prisoners were required, under the Court Services tracking system, to record the time that a prisoner entered the facility on the top of the HOT sheet. However, in many instances this did not occur due to the volume of prisoners arriving at the PPC. It was not until several hours later that a prisoner's HOT sheet information was entered into the pre-booking spreadsheet. As a result, the time recorded did not reflect the actual time the prisoner entered the facility.¹⁰⁷ The effect of this was that the PPC lost track of how long an individual had actually been held in the facility and, as a result, could not properly determine when that individual should be released.

Additional tracking forms were also used to capture and track a prisoner's movements while in the main holding cells, and to ensure that prisoners were being processed and released in a timely manner. The tracking forms were designed to be filled out by Court Services officers when prisoners were moved, fed, or used the telephone. The difficulty, however, was that the prisoner information recorded on the tracking form was not entered into the Criminal Information Processing System until *after* a prisoner had been released from the facility. Therefore, there was no centralized means for a Court Officer to obtain a "real-time" update on a particular prisoner and to make determinations concerning his or her status. The Court Officer was instead required to locate the prisoner physically and then check his or her hard-copy tracking form. The difficulties associated with this system were compounded by the fact that prisoners were tracked separately within each of the four "zones" created by Court Services. After a prisoner was moved from one zone to another, tracking stopped in the previous zone and started over again in the new one.¹⁰⁸ As a result, there was no centralized means of determining where a prisoner was in the PPC, for how long he or she had been there, or whether the prisoner had received sufficient access to medical care, food, water, or legal counsel.

c. Division of PPC into Four Zones

Immediately before the G20 Summit began, the PPC Incident Commander divided the facility into four "zones" and appointed a Court Services supervisor responsible for each zone.¹⁰⁹ I have been unable to determine the reason for this division of the facility. It was left to the discretion of each supervisor what processes and procedures would be used in his or her own zone.¹¹⁰ This meant that prisoners were subject to different and duplicative processes as they moved through the PPC.

¹⁰⁶ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹⁰⁷ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹⁰⁸ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 49.

¹⁰⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45.

¹¹⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45.

In addition, the processes developed on one shift were changed by the relieving shift, causing further duplication, miscommunication, and delay.¹¹¹

iv. Delays in prisoner booking

The combined impact of the changes to the PPC resulted in long delays in prisoner booking. These delays, in particular, had a significant impact on prisoners. While prisoners were kept in the pre-booking cells waiting to be seen by the Officer in Charge, they were, in effect, in “limbo.” The pre-booking cells were designed to house prisoners for very short periods of time and only in the event that all 12 booking lanes were occupied. They were simply temporary holding cells used as a stop between a prisoner being off-loaded from a police wagon and before being booked and entering the main holding area. The result was that prisoners kept in pre-booking cells were not provided with the same care that was given to prisoners who had completed the booking process and were lodged in the main holding area. For example, the PPC Plan stated that prisoners were to be kept in restraints while in the pre-booking cells and were not to be given access to counsel or to a telephone. The underlying intention was that prisoners would be processed quickly and then transferred to the main bullpens where their restraints would be removed and they would have access to food, water, and legal counsel.

In practice, however, the bottleneck caused by the pre-booking process meant that large numbers of prisoners were lodged in pre-booking cells for long periods of time. The Toronto Police Service *After-Action Review* stated that, in some cases, prisoners were kept in pre-booking cells for over 24 hours.¹¹² Despite the obvious and significant impact that the delays were having on prisoners, no changes were made to the pre-booking process or the PPC Plan by the PPC Incident Commander or Toronto Police Service commanders in the MICC.

Submissions made at the Review’s public consultations confirmed that, in some instances, prisoners were kept in over-crowded pre-booking cells for over 24 hours and were then released without charge. During that time, they were not given access to lawyers and were not provided food or water.¹¹³

v. Large influxes of prisoners

At various points during the G20 Summit, there were several large influxes of prisoners at the PPC, each of which exacerbated the operational difficulty already being experienced.

A total of 885 people were taken to and processed at the PPC. Notably, 450 of those people were arrested during the evening of June 26 and early morning of June 27 and were transported to the PPC for processing. A further 81 people were arrested on the evening of June 27 at Queen Street and Spadina Avenue and were also then taken to the PPC. These large influxes of prisoners overburdened the PPC, which was already bogged down in unnecessary, duplicative procedures.

¹¹¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 45.

¹¹² Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹¹³ Public Hearing, Toronto (1 June 2011), submissions made by T. Thompson and J. Rosenfeld.

In the end, this caused delay at the beginning of the PPC booking process because a bottleneck had developed due to the pre-booking process. These large influxes also led to overcrowding as the PPC reached capacity.¹¹⁴ In some instances, the extent of the overcrowding meant that there was standing room only in some cells.

vi. Implementation of back-up plan

As I have already explained, the PPC Plan contained no formal back-up measures in the event the facility reached capacity or could no longer operate. There was a general plan to use existing Toronto Police Service facilities in those circumstances.¹¹⁵

In the afternoon of June 27, 2010, a small number of people who had been arrested during the G20 Summit were taken to Toronto Police Service divisional facilities, rather than the PPC. Chief Blair advised in his interview that the reasons for the implementation of the back-up plan were that the PPC had reached capacity and that ongoing demonstrations taking place outside of the PPC were preventing the safe release of prisoners who had been processed.¹¹⁶

Given the extent of the delays during the G20 Summit and the readily apparent impact on prisoners, the back-up plan should have been implemented well before the afternoon of June 27th. By the evening of June 26th, it was clear that the PPC was experiencing significant delays in processing prisoners and that large influxes of additional prisoners would only make these delays worse. In particular, the sudden influx of prisoners meant that there was a substantial delay in prisoners being paraded before an Officer in Charge. Existing Toronto Police Service divisional facilities were available to receive and process prisoners and they should have been used to relieve pressure on the PPC.

F. THE IMPACT ON PRISONERS

The problems encountered at the PPC had a significant impact on the prisoners detained in it. Paragraph 8, in the Terms of Reference, asks me to determine whether the PPC was adequate with respect to the following issues: medical care for prisoners; access to lawyers; access to duty counsel; housing of prisoners with disabilities; housing of young people; access of young people to their parents; strip searches of prisoners; supply of food and water for prisoners; access to toilet facilities; personal property of prisoners; and releasing prisoners without charge.

As I have already said, under the preamble to the Terms of Reference I am not to express any conclusions regarding civil or criminal responsibility. In the remainder of this chapter, therefore, I focus on the aspects of the PPC Plan that relate to the policy issues listed in paragraph 8 of the Terms of Reference. Based my review of the record, I identify and provide examples of particular problems that arose during the G20 Summit for the purpose of highlighting matters that should be of concern to the Board in future planning for the operation of a similar facility.

¹¹⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹¹⁵ Review's Interview with Chief William Blair (22 November 2010, Toronto) at 21.

¹¹⁶ Review's Interview with Chief William Blair (22 November 2010, Toronto) at 21.

i. Delay

It is clear that the PPC Planning Team intended the PPC to be an efficient prisoner processing facility. The introduction to the prisoner management section of the PPC Plan stated that “[i]t is key that the facility be streamlined to ensure [an] effective and timely response from booking to release.”¹¹⁷ The PPC Planning Team intended that prisoners would arrive at the PPC, undergo the booking process and then either be released (with or without conditions) or transferred to a court facility for a bail hearing. The PPC was not designed to be a detention centre where prisoners would be held for any significant length of time. Nonetheless, many standard Toronto Police Service procedures were adopted without adaptation and without consideration as to whether they would be sufficient to ensure prisoners would be able to move through the PPC effectively and efficiently.

In designing the PPC and the processes to be followed at the facility, the PPC Planning Team understood that the law required that a person arrested and charged must be brought before a Justice of the Peace within 24 hours. They were also advised that persons detained for breach of the peace had to be released within 24 hours and that the PPC had to be designed in a manner that allowed for their release after a short period of time.¹¹⁸ The need for an efficient and streamlined booking and release process was as much a legal imperative as it was a logistical one.

Despite the PPC Planning Team’s intentions and efforts, significant delays were encountered at the PPC, particularly at the pre-booking stage. The result was that detained prisoners were required to wait to be processed for longer periods than had been expected. During this delay, these prisoners were unable to access some of the services that would only be made available to them once they had been through the booking process. Moreover, these prisoners were kept in uncomfortable conditions until such time as they had been evaluated from a safety perspective.

Consultation between the Chief and the Board would have led to the identification of objectives and priorities for prisoner care and management at the PPC. The delays experienced at the PPC highlight the importance of such consultation and the need to ensure that an operational plan achieves all objectives that have been set.

ii. Detention in restraints

The PPC Plan stated that prisoners were to be kept in handcuffs before being paraded before an Officer in Charge. This was consistent with the standard Toronto Police Service booking procedure.¹¹⁹ In particular, the PPC Plan provided that “prisoners are to remain handcuffed to expedite the unloading of prisoners and will remain handcuffed until paraded before the booking

¹¹⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 44

¹¹⁸ Breach of the peace is not an offence under the *Criminal Code*, R.S.C. 1985, c. C-46. It was originally a common law power that was codified by ss. 30 and 31 of the *Criminal Code* and permits a police officer who witnesses a breach of the peace to arrest “any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.”

¹¹⁹ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

Staff Sergeant.”¹²⁰ The PPC Business Case Analysis also stated that, due to safety concerns, prisoners should remain in restraints until being paraded because not all prisoners would be thoroughly searched at the time of their arrest.¹²¹ In order to minimize the number of times that a prisoner would be searched, the PPC Planning Team considered that the best way to ensure the safety of officers and those detained at the PPC was to conduct a single search during the booking process.¹²² The Officer in Charge could, at that time, determine on a case-by-case basis what level of search would be appropriate (i.e. a search of clothing or a strip search).¹²³

The PPC Business Case Analysis also anticipated that sudden influxes of prisoners at the PPC would mean that it could take longer for some prisoners to be booked than others and stated that “if this were to occur, measures *will be* enacted to try and minimize the length of time that individuals are restrained, including advanced pre-screening of cases by a supervisor.”¹²⁴ However, no particular measures for this process were indicated in the PPC Plan. Instead, the focus of the PPC Planning Team was to develop an efficient booking process in order to avoid undue delays even in the event of a large influx of prisoners. In the absence of delays, the length of time prisoners would be kept in restraints should have been minimal.

In my review of CCTV footage taken at the PPC, I observed large numbers of prisoners in pre-booking cells, many of whom were restrained with “flex-cuffs” – temporary, plastic restraints – the entire time they were in those cells. Importantly, the PPC Business Case Analysis noted in particular that prisoners were not to be “transported or brought to the PPC in ‘flex-cuffs,’ *which could be more onerous after a prolonged period of time.*”¹²⁵ Chief Blair also indicated during his interview that “flex-cuffs” were not normally used to transport prisoners and that standard handcuffs are typically used.¹²⁶ It is unclear, however, whether the PPC Plan distinguished between “flex-cuffs” and conventional handcuffs because it included two ambiguous references to keeping prisoners restrained before being paraded. The Court Service Prisoner Management Plan (Appendix 1 to the PPC Plan) stated that on arrival “all detained persons shall remain in *restraints* and may be lodged in pre-booking cells prior to being paraded by an Officer in Charge.”¹²⁷ However, the prisoner management flow chart stated that upon entry into the PPC, prisoners “will then be placed (*handcuffed*) into holding pens.”¹²⁸

¹²⁰ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 51.

¹²¹ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

¹²² Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

¹²³ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

¹²⁴ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18 [emphasis added].

¹²⁵ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18 [emphasis added].

¹²⁶ The standard procedure simply states that when transporting a person in custody to a police station, an officer must use authorized restraints only: Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹²⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 105 [emphasis added].

¹²⁸ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 44 [emphasis added].

What is clear from my review of the record is that although it became clear that prisoners were being kept in pre-booking cells for long periods of time while restrained, no steps were taken to implement alternate measures. The Toronto Police Service *After-Action Review* stated that following the significant influx of prisoners on the evening of the Saturday into the morning of the Sunday, prisoners were detained in pre-booking cells while restrained for significant periods of time, in some cases up to 24 hours.¹²⁹ Clearly, this is far beyond the period of time contemplated by the PPC Plan. Chief Blair stated during his interview that it was contrary to Toronto Police Service procedure to restrain prisoners for long periods of time and that it “shouldn’t have happened.”¹³⁰ I appreciate Chief Blair’s frank answers to the questions posed to him on this issue. Once it became clear to the Toronto Police Service that the booking process was experiencing significant delays, a review of the impact this could have on those detained and waiting for booking should have been conducted and appropriate changes to the process should have been made.

Despite the PPC Business Case Analysis’ express consideration of the impact of prisoners being held in flex cuffs, the PPC Plan itself did not stipulate that flex cuffs were not to be used for extended periods of time and did not contain a procedure to ensure that prisoners were removed from flex cuffs. The use of flex cuffs is another issue that should have been considered by the Board, in consultation with the Chief, and should have been reflected in the PPC Plan.

iii. Release of prisoners without charge

The PPC Plan did not provide a specific process for the release of prisoners. As I have discussed, however, the Toronto Police Service *After-Action Review* stated that prisoners were intended to be brought before an Officer in Charge before being released, which is consistent with the standard Toronto Police Service booking process.¹³¹ The PPC Plan and the PPC Business Case Analysis show that the facility was designed to process up to 500 prisoners within a 24-hour period.¹³² That process was estimated to take about 11 hours, leaving the remainder of a 24-hour period to release prisoners using the same 12 booking lanes.¹³³ This facility’s intended capacity was not, however, adequately explained to the PPC’s command.¹³⁴

The large volume of prisoners and the additional time required to parade those prisoners before an Officer in Charge meant that there was minimal capacity also to release prisoners. In an attempt to address the problem, one of the 12 booking lanes was designated as a release trailer.¹³⁵ With the

¹²⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹³⁰ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 38.

¹³¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50; Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹³² Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 43.

¹³³ Toronto Police Service Prisoner Processing Centre (PPC) Business Case Analysis (10 March 2010) at 18.

¹³⁴ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 205-206.

¹³⁵ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

large influx of prisoners, however, this also proved inadequate and the Officer in Charge could not manage the volume of prisoners being brought to the booking lanes for release processing.¹³⁶

The impact of the delay in releasing prisoners also led to the overcrowding of cells. As additional prisoners arrived, officers were unable to release prisoners at the same rate. This led to overcrowding in the main cell area and, in particular, in the pre-booking cells. Ultimately, it led to some prisoners being released straight from the holding cells without being seen by an Officer in Charge, as was required by the standard Toronto Police Service booking process.¹³⁷ It also led to some prisoners being held in pre-booking cells for a number of hours (in some cases up to 24 hours) and released without having been paraded, therefore, without charges being laid.¹³⁸ An after-action memorandum written by a member of the PPC Planning Team stated that “the delay in release of persons at the PPC who were not being charged took far too long and served to further jam up the smooth operation of the facility.”¹³⁹

The absence of a specific process for the release of prisoners from the PPC, particularly those arrested for breach of the peace, was another instance in which the PPC Plan was incomplete. This emphasized the need for the Board and the Chief to set objectives that reflect the unique demands of a mass detention centre.

iv. Access to counsel

In advance of the G20 Summit, the PPC Planning Team sought advice on the manner in which prisoners should be given access to counsel.¹⁴⁰ The standard Toronto Police Service booking process provided that prisoners are entitled to in-person access to defence counsel and telephone access for other legal advice.¹⁴¹ Duty counsel is not normally present at Toronto Police Service facilities.¹⁴²

During the planning process, the PPC Planning Team was concerned about logistical challenges that could arise if a large number of prisoners decided to speak to duty counsel instead of exercising their right to counsel via the telephone.¹⁴³ If a sufficient number of duty counsel was not available, backlogs would develop in both the processing and subsequent release of those prisoners. The PPC Planning Team was also concerned that in-person access to private counsel at the PPC would cause similar logistical problems, especially if there was a large number of prisoners being processed at one time and a high percentage of them choose to demand access to their private lawyers. It would be wrong to provide an option to prisoners but then fail to facilitate

¹³⁶ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹³⁷ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹³⁸ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹³⁹ Internal Toronto Police Service Correspondence (14 July 2010).

¹⁴⁰ Legal Memorandum from City of Toronto Legal Services to Toronto Police Services (27 Mar 2010).

¹⁴¹ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹⁴² Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 10.

¹⁴³ Legal Memorandum from City of Toronto Legal Services to Toronto Police Services (27 Mar 2010).

the exercise of that choice in a meaningful way.¹⁴⁴ Ultimately, the PPC Planning Team was advised to provide access to counsel, both private and duty counsel, through the use of individual telephone booths only, unless it was certain that there would be sufficient capacity to meet the demand for requests to access counsel in person.¹⁴⁵

The PPC Plan contained a specific section pertaining to access to counsel and differentiated between access to duty counsel and access to private counsel. It attempted to strike a balance between legitimate logistical concerns and the need to facilitate meaningful access to legal advice.¹⁴⁶

a. Duty counsel

The PPC Plan provided that duty counsel were to be available to prisoners at the PPC from 10:00 a.m. to 10:00 p.m. each day of its operation.¹⁴⁷ Private interview rooms were constructed for use by duty counsel so they could interview and discuss matters with their client privately. Throughout the operation of the PPC, the duty counsel worked in two shifts: from 10:00 a.m. to 2:30 p.m. two duty counsel lawyers were on duty and from 2:00 p.m. to 10:00 p.m. four duty counsel were on duty.¹⁴⁸

b. Private lawyers

Limited access was made available to in-person private counsel at the PPC. The section of the PPC Plan concerning access to counsel provided that “[o]nly counsel previously hired by special interest groups whose clients are currently detained at the [PPC] will be permitted access to the designated lawyer interview rooms to speak directly to their clients.”¹⁴⁹ The Prisoner Management Flow Chart also provided that “[unless] a prisoner has previously retained a lawyer, counsel will not have access to the PPC.”¹⁵⁰

Prisoners were able to contact their private counsel by telephone. The PPC contained 12 telephone booths with doors from which prisoners could place calls to their lawyers and have confidential discussions. The telephone booths were capable of making calls but not receiving calls. The result was that if a prisoner attempted to reach his or her lawyer but could not get the lawyer on the line at that moment, there was no ability for the lawyer to call back and reach the prisoner quickly.

¹⁴⁴ Legal Memorandum from City of Toronto Legal Services to Toronto Police Services (27 Mar 2010).

¹⁴⁵ Legal Memorandum from City of Toronto Legal Services to Toronto Police Services (27 Mar 2010).

¹⁴⁶ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 59.

¹⁴⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 59.

¹⁴⁸ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 59.

¹⁴⁹ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 59.

¹⁵⁰ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 45.

The PPC did not state when prisoners would be allowed to speak to duty counsel or private counsel, or to access a telephone. It also did not provide for who at the PPC would be responsible for determining if and when prisoners would be granted access to counsel.¹⁵¹

I note that the PPC Planning Team's decision to provide in-person access to duty counsel and to restrict access to private counsel is a departure from the standard Toronto Police Service procedure.¹⁵² In circumstances in which a new operational plan affects a person's ability to exercise a legal right, such as access to counsel, the Chief should consult with the Board to ensure that the new procedure adequately protects that right.

c. Restrictions on access to counsel

One of the consequences of the procedural "limbo" in which prisoners kept in pre-booking cells found themselves was that access was not provided to either duty counsel or the telephone booths for calls to private lawyers.¹⁵³ As I have said, the Toronto Police Service *After-Action Review* stated that some prisoners were detained in pre-booking cells for up to 24 hours.¹⁵⁴ Moreover, many of those prisoners were released from the PPC without ever being booked and, therefore, without ever having been given the opportunity to speak to a lawyer.¹⁵⁵

Further, prisoners who had completed the booking process experienced difficulties in gaining access to counsel. Despite the effort made and plan developed to provide duty counsel at the PPC, the lawyers on duty at the PPC saw very few prisoners during the G20 Summit. A series of e-mails between duty counsel and PPC commanders indicated that few prisoners were being given access to duty counsel despite repeated requests to do so. For example, one e-mail from a duty counsel said that "officers keep telling us that everyone wants to speak to a lawyer and *we have seen a total of 6 people in 4 hours.*"¹⁵⁶ A subsequent e-mail also stated that "[t]he last two clients we saw say they have been asking to speak to a lawyer for hours and *the police are just ignoring them. Have seen one more client since the last e-mail I sent.*"¹⁵⁷

Submissions made to the Review by the Criminal Lawyers' Association ("CLA") and by members of the public at the Review's public consultations also indicated that access to counsel, in person or by telephone, was restricted. CLA lawyers who were given access to enter the PPC to speak to clients observed that the telephones were not used to their capacity and that most were not being used at all during the time that there were present at the facility. If the phones were being used, the observation was that only one was being used at a time. In addition, CLA lawyers observed,

¹⁵¹ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 59.

¹⁵² Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010); Review's Interview with Chief Blair (22 November 2011, Toronto) at 10.

¹⁵³ Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

¹⁵⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹⁵⁵ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50; Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

¹⁵⁶ E-mail from Duty Counsel-G20 to Toronto Police Service (27 June 2010).

¹⁵⁷ E-mail from Duty Counsel-G20 to Toronto Police Service (27 June 2010) [emphasis added].

and were told that, prisoners were *not* informed that they had the option to speak to duty counsel in person.¹⁵⁸ One CLA lawyer, who was permitted to enter the PPC shortly after midnight on June 26, 2010 was told that he was the first lawyer to be given access to the facility.¹⁵⁹ This observation is consistent with duty counsel e-mails to the PPC command, discussed above.

In written answers to undertakings given during Chief Blair's interview with the Review, the Toronto Police Service advised that there were multiple causes for the delays experienced in providing prisoners with access to counsel:

- the large influxes of prisoners and the bottlenecks experienced at the pre-booking stage of prisoner processing;
- delays in the booking process caused by insufficient or illegible arrest information recorded on prisoner HOT sheets, which required additional time to verify;
- a breakdown in communication between Court Services officers and Toronto Police Service investigative officers on when prisoners were allowed access to counsel;
- the removal or loss of prisoner wrist bands, which contained arrest information and a prisoner identification number;
- the sheer number of prisoners detained at the PPC, as the protocol that was followed at the PPC (although not provided for in the PPC Plan) required prisoners to be escorted individually to counsel interview room or to telephones; and
- the short timeframe given to plan and test the procedures and processes to be followed at the PPC.¹⁶⁰

These answers are consistent with the findings of the OIPRD Report.¹⁶¹

The causes for the delays in providing access to counsel at the PPC all result from the lack of detailed, PPC-specific procedures, which should have been contained in the PPC Plan.

Whether the delay in access to counsel amounted to a breach of an individual's *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 ("*Charter*") would be a matter for a court to determine on the basis of the evidential record.

¹⁵⁸ Submissions of the Criminal Lawyers' Association to the Review, Affidavit of Kevin Tilley, sworn (20 December 2010) at paras. 20 and 23.

¹⁵⁹ Submissions of the Criminal Lawyers' Association to the Review, Affidavit of Ferhan Javed, sworn (20 December 2010) at para. 16.

¹⁶⁰ Toronto Police Service Answers to Undertakings, No. 41 (21 February 2012).

¹⁶¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 226-227.

v. Medical care

The PPC Plan provided that a prisoner's physical and mental well-being would be assessed at several stages of the booking process. Immediately on arrival at the PPC, prisoners were supposed to be assessed and given "basic medical aid" if "they [had] a medical condition or injury that warrant[ed] the attention of medical staff."¹⁶² The Officer in Charge was primarily responsible for evaluating the physical and mental condition of a prisoner and determining whether or not particular medical attention was required.¹⁶³

There was a medical trailer staffed by doctors at the PPC.¹⁶⁴ A doctor was present at the facility for the entire period that it was operational (June 18 to June 28) and was available from 7:00 a.m. to 7:00 p.m.¹⁶⁵ The PPC Plan stated that "if circumstances dictate those hours will be extended."¹⁶⁶ Toronto Emergency Medical Services ("EMS") was also responsible for providing emergency medical care for all prisoners detained at the PPC and the PPC Plan included a Toronto EMS Operational Plan as an appendix.¹⁶⁷ The PPC Plan did not make specific reference to the manner in which prescribed medication would be made available to prisoners. Under the standard Toronto Police Service booking procedure, the Officer in Charge is responsible for making enquiries of a prisoner concerning prescribed medication, which is only to be provided if the prescription belongs to the prisoner and has not expired.¹⁶⁸ The medication is dispensed in accordance with the directions contained on the container label. The standard Toronto Police Service booking procedure also requires that prisoners are to be assessed every 30 minutes and that the Officer in Charge must be notified of any change in the prisoners' condition and if medical attention is required.¹⁶⁹

Medical care was one of the few matters that were covered in any detail by the PPC Plan but the delays caused by the pre-booking process affected prisoners' access to medical care. The Toronto Police Service *After-Action Review* stated that the delays caused by the pre-booking officer meant that an Officer in Charge was not able to assess prisoners' physical and mental state, including whether or not a particular prisoner required segregation before being put in bullpen cells with other prisoners.¹⁷⁰ In addition, unless a medical condition was recorded by the arresting officer on a prisoner's HOT sheet or was identified by a Court Services officer at the PPC, there was no procedure in place to ensure that a prisoner's mental and physical state was assessed until they were paraded before an Officer in Charge.¹⁷¹

¹⁶² Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 44.

¹⁶³ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 108.

¹⁶⁴ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 44.

¹⁶⁵ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 32.

¹⁶⁶ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 32.

¹⁶⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 154-155.

¹⁶⁸ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹⁶⁹ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010).

¹⁷⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

¹⁷¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 48.

Prisoners' health and well-being were to be assessed as they arrived at the PPC and during the booking process. Doctors were available at the facility but the bottlenecks experienced during the pre-booking process meant that problems were still encountered.

vi. Provision of food and water

The PPC Plan provided that "[meals] for detained persons shall be provided by Court Services staff. Prisoners *shall* be fed every six hours."¹⁷² It also listed the standard Toronto Police Service procedure concerning the provision of meals to persons in custody as a relevant procedure, but did not explain how a procedure typically applied in a small divisional facility, with at most a few dozen prisoners, would be translated into a facility for 500 prisoners.¹⁷³ The PPC Plan also did not specify whether the standard Toronto Police Service procedure regarding meals for prisoners was to be followed in whole or in part.

Under the standard procedure, prisoners were to be provided meals at specific times of the day.¹⁷⁴ The average time between those meal times was six hours but if a prisoner requested a meal outside of the prescribed time and there was reason to believe the prisoner had not eaten for a lengthy period, a meal must be provided at the earliest opportunity.¹⁷⁵ Accommodation was also to be made for prisoners with specific dietary restrictions (e.g. diabetes or religious restrictions). Importantly, the standard Toronto Police Service procedure required that all information concerning the provision of food be entered into the Criminal Information Processing System and that the Officer in Charge was responsible for ensuring compliance with the Procedure.¹⁷⁶

The problems caused by the manual Court Services prisoner tracking system meant that there was no centralized way of determining whether or not meals were provided in accordance with the PPC Plan, the standard Toronto Police Service Procedure, or at all.¹⁷⁷ It also meant that it became difficult to keep track of when meals were provided to specific prisoners.¹⁷⁸ The Toronto Police Service *After-Action Review* stated that over the two days of the G20 Summit, the large volume of prisoners and the difficulties experienced with the tracking forms meant that information concerning the provision of food and water was not recorded.¹⁷⁹ Court Services officers resorted to providing prisoners with food and water *en masse*. In his interview, Chief Blair noted these difficulties particularly affected prisoners lodged in pre-booking cells, many of whom experienced lengthy delays and were moved and fed without this information being documented.¹⁸⁰

¹⁷² Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 62 [emphasis added].

¹⁷³ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 84.

¹⁷⁴ Toronto Police Service Procedure 03-07 Meal Provision for Persons in Custody (issued 10 September 2007)

¹⁷⁵ Toronto Police Service Procedure 03-07 Meal Provision for Persons in Custody (issued 10 September 2007)

¹⁷⁶ Toronto Police Service Procedure 03-07 Meal Provision for Persons in Custody (issued 10 September 2007)

¹⁷⁷ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 49.

¹⁷⁸ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 49.

¹⁷⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 49.

¹⁸⁰ Review's Interview with Chief William Blair (22 November 2011, Toronto) at 19.

The food and water available at the PPC were supplied by the same company that supplies food to court facilities in Toronto. Therefore, prisoners at the PPC received the same food that they would have received had they been detained at a Toronto Police Service divisional facility.

The provision of food and water to prisoners at the PPC was another instance in which the bottlenecks, overcrowding, and consequent delays affected the quality of prisoner care.

vii. Strip searches

With regard to the use of strip searches, the Prisoner Management Flow Chart (contained in the PPC Plan) provided the following: “[after] Booking the prisoners will receive either a Level 2 or a Level 3 [strip] search as authorized by the booking Staff Sergeant.”¹⁸¹ The PPC Plan also listed the standard Toronto Police Service procedure concerning search of persons as a relevant procedure.¹⁸²

Under the standard Toronto Police Service procedure, every person who is taken to a police facility under arrest is subject to a search for safety reasons.¹⁸³ The level of search conducted is assessed on a case-by-case basis and is determined by the presence (or absence) of risk factors. There are four levels of searches, Level 1 being the least invasive and Level 4 the most. A Level 2 search involves the search of a person’s clothing and may involve the removal of certain pieces of clothing, including belts, footwear, and extra layers. A Level 3 search is colloquially known as a “strip search” and involves the removal of some or all of a person’s clothing and visual inspection of the body, including genitalia.¹⁸⁴

Under the standard procedure, Level 3 searches must be authorized by the Officer in Charge.¹⁸⁵ The responsible officer must consult with the Officer in Charge and advise of the particular grounds that justify that type of search. Where the Officer in Charge is not satisfied that reasonable grounds for a Level 3 search exist, he or she must ensure that only a Level 2 search is conducted. Where a Level 3 search is conducted, it must be in private and performed by a member of the same gender as the person to be searched. Officers conducting a Level 3 search must complete a prescribed form that includes the details of the search and the grounds upon which it was conducted. All Level 3 searches must also be entered into Criminal Information Tracking System. Finally, specific, alternate arrangements must be made for the search of transgendered and transsexual persons.¹⁸⁶

In *R. v. Golden*, [2001] 3 S.C.R. 679, the Supreme Court of Canada held that a search of a person is *prima facie* unreasonable under section 8 of the *Charter* and the onus is on the officer conducting the search to demonstrate that the search is justified in law, necessary in the

¹⁸¹ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 45.

¹⁸² Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 84.

¹⁸³ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

¹⁸⁴ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

¹⁸⁵ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

¹⁸⁶ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

circumstances, and was conducted reasonably. However, safety reasons require that all persons under arrest undergo some form of search before being brought into a police station and before being put into a cell. Stronger grounds are required as the level of intrusiveness of the search increases. The more intrusive the search the more justification is required, which must be articulated by the searching officer. The Toronto Police Service procedure was revised following *Golden* to ensure that they complied with that decision.¹⁸⁷

Under the standard Toronto Police Service procedure, the grounds to consider in determining whether a Level 3 search is justified include: the circumstances under which the person was arrested, including any items that were discovered during a Level 1 or 2 search; risks to the individual, the police, or other prisoners in not performing the search; and, in general, the potential for contact with other prisoners that would create an opportunity for the transfer of contraband.¹⁸⁸

Separate Level 2 and Level 3 search areas were created at the PPC to ensure compliance with existing Toronto Police Service procedures.¹⁸⁹ I have seen no indication that any searches occurred outside of these prescribed areas.

In written answers to undertakings given during the Chief's interview with the Review, the Toronto Police Service advised that 334 Level 3 searches occurred at the PPC during the G20 Summit. Only 281 were properly documented.¹⁹⁰ The Toronto Police Service acknowledged that if no documentation was prepared for a Level 3 search, that search would not be in compliance with the Toronto Police Service procedure.¹⁹¹ I also note that it would not be in compliance with Board Policy LE-012 – Search of Persons. Finally, the PPC Commander's memo book indicated that proper authorization was sought and obtained with respect to 41 of the 53 Level 3 searches for which there is no documentation.¹⁹²

A third of the people processed at the PPC underwent a Level 3 search.¹⁹³ The proportion of people subjected to a Level 3 search was not caused by inadequate processes or procedures or the general systemic problems encountered at the PPC. At the time of the G20 Summit, there was a detailed Board policy and a Toronto Police Service procedure governing Level 3 searches, which identified the need for a legal justification for a search, the process to be followed to obtain authorization for a search, details concerning the manner in which a search is to be conducted, and the need to properly document a search. In my view, the high incidence of Level 3 searches was a result of operational decisions made at the PPC. I recommend that the Board conduct a review of the Level 3 searches conducted at the PPC to determine the cause of the high number of searches.

¹⁸⁷ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

¹⁸⁸ Toronto Police Service Procedure 01-02 – Search of Persons (issued 5 February 2009).

¹⁸⁹ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 32.

¹⁹⁰ Toronto Police Service Answers to Undertakings, No. 44 (21 February 2012).

¹⁹¹ Toronto Police Service Answers to Undertakings, No. 44 (21 February 2012).

¹⁹² Toronto Police Service Answers to Undertakings, No. 44 (21 February 2012).

¹⁹³ The Toronto Police Service *After-Action Review* states that of the 1,118 arrested during the G20 Summit, 885 were processed at the PPC. The Toronto Police Service advised that 334 prisoners underwent Level 3 searches at the PPC: Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 46; Toronto Police Service Answers to Undertakings, No. 44 (21 February 2012).

The use of Level 3 searches of persons arrested during public demonstrations was highlighted during the PPC planning process. In particular, a memorandum from legal counsel to the Toronto Police Service cited a previous case in which a Level 3 search had been conducted of an individual arrested for breach of the peace. The memorandum noted that “[t]here did not appear to be any reason for the search aside from the practice that all persons arrested at the demonstration were subject to a Level 3 search.”¹⁹⁴ The high proportion of Level 3 searches undertaken at the PPC during the G20 Summit merits further investigation by the Board. Board Policy LE-012 – Search of Persons includes a requirement that the chief of police report to the Board quarterly on the searches of persons conducted by the Toronto Police Service in the previous quarter. I recommend, therefore, that the Board require that the chief of police’s next quarterly report address the high incidence of Level 3 searches at the PPC and lack of proper documentation for many of these searches.

Recommendation No. 36: Board to require a report on Level 3 searches conducted during the G20 Summit

The Board should require that the chief of police’s next quarterly report address the number of Level 3 searches conducted at the PPC and lack of proper documentation for many of these searches.

After the Board considers this report, it should determine: (i) whether it is necessary to direct the chief of police to undertake a review of the procedure governing Level 3 searches; and (ii) whether consultation with the Chief of Police is required concerning the use of Level 3 searches in the context of public demonstrations and whether further direction would be necessary to ensure such searches are conducted only where specific justification for them exists.

viii. Young people

The detention of young people gives rise to specific considerations. I shall discuss two of these considerations: segregation from the detained adult population and access to counsel or a parent or guardian.

Section 30(3) of the *Youth Criminal Justice Act*, S.C. 2002, c. 1 requires that a young person “be held separate and apart from any adult who is detained or held in custody.” Under the standard Toronto Police Service procedures, there are designated police facilities for the detention of male, female and young persons.¹⁹⁵ Young persons are not housed in the same facility as adults.

The Court Services Custody Management Plan (Appendix 1 to the PPC Plan) provided that “all detainees shall be lodged according to gender, youth/adult status, and assigned classification.”¹⁹⁶

¹⁹⁴ Legal memorandum from City of Toronto Legal Services to Toronto Police Service (9 February 2010) at 2.

¹⁹⁵ Toronto Police Service Procedure 03-03 – Toronto Jail and Detention Centres (issued 13 September 2007)

¹⁹⁶ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 107-8.

Prisoner “classification” was determined primarily on safety grounds. Prisoners who presented a particular threat to themselves, other prisoners, or Court Services officers were segregated from other prisoners. Depending on the nature and severity of the threat, prisoners received different levels of segregation and supervision. Chief Blair confirmed during his interview that young people were supposed to be separated into two separate cells: one for 14 to 15 year olds and one for 16 to 17 year olds.¹⁹⁷

The main cell area in the PPC was separated using physical and visual barriers to ensure that young people had some separation from the main adult population and that male and female prisoners were separated. While some forms of visual separation may not have been ideal and actual separate facilities or segregated units in the same facility would have been more in keeping with existing standards, the circumstances of the G20 Summit were unique.

The OIPRD Report stated that no cells were specifically designated to hold young people. The decision to designate a particular cell as being for men, women, or young people, was done after prisoners arrived at the PPC.¹⁹⁸

The overcrowding and delays in the pre-booking process experienced at the PPC and the failure to designate specific cells for young people meant that some young people were not placed in appropriate detention conditions. The Toronto Police Service *After-Action Review* stated that the overcrowding experienced at the PPC, particularly in pre-booking cells, meant that in some circumstances, young people were kept in bullpens with adults.¹⁹⁹ Given the delays experienced in the pre-booking process, some young people were detained with adults for long periods of time. Moreover, until a young person had completed the booking process, he or she was not given access to a telephone to call his or her parents or a lawyer.²⁰⁰ An Officer in Charge would not have been aware of these problems until the young person was booked.

The OIPRD Report found that the Toronto Police Service had not produced a single completed Notice to Parent to demonstrate compliance with s. 26 of the *Youth Criminal Justice Act*.²⁰¹

¹⁹⁷ Review’s Interview with Chief William Blair (22 November 2011, Toronto) at 34.

¹⁹⁸ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 222.

¹⁹⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 49.

²⁰⁰ *Youth Criminal Justice Act*, S.C. 2002, c. 1, s. 26: “[I]f a young person is arrested and detained in custody pending his or her appearance in court, the officer in charge at the time the young person is detained shall, as soon as possible, give or cause to be given to a parent of the young person, orally or in writing, notice of the arrest stating the place of detention and the reason for the arrest.”

²⁰¹ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 222.

Recommendation No. 37: Amendment to Board Policy LE-016 – Prisoner Care and Control to ensure compliance with the *Youth Criminal Justice Act*

The Board should amend Board Policy LE-016 – Prisoner Care and Control to provide that where young people may be detained in the same facility as adults specific measures are taken to guarantee compliance with the *Youth Criminal Justice Act*.

ix. Access to toilet facilities

There were two types of cells in the main part of the PPC. The larger cells – bullpens – each contained a “porta-potty” without a door. The smaller cells, which were designed to house individual prisoners, did not have toilet facilities. Instead, there were banks of “porta-potties” outside the cells, also without doors, that were for use by prisoners kept in the smaller cells. Those prisoners were required to be escorted by Court Services officers when they wished to use the toilet facilities.

The provision of toilet facilities without doors was consistent with the standard practice at Toronto Police Service divisional facilities, where doors are removed for safety concerns, namely, to ensure that prisoners cannot harm themselves. Removing the door ensures that prisoners can remain in visual range with Toronto Police Service officers at all times. I understand that for most of the individuals in the PPC, the experience of using a toilet facility in the presence of others who were able to see them is very upsetting. However, given the legitimate safety concerns that would be associated with certain prisoners being out of visual range for periods of time, the design decision made by the PPC Planning Team was consistent with applicable standards.

That said, a concern raised during the public consultations was that male and female prisoners were not always properly separated by the physical barriers which were designed to keep the two prisoner populations separate.²⁰² This concern was echoed in the OIPRD Report.²⁰³ Therefore, in certain instances, prisoners were forced to use the toilet facilities while possibly being in sight of members of the opposite sex.

²⁰² Submissions made by T. Thompson, J. Rosenfeld and Law Union of Ontario to the Review (1 June 2011).

²⁰³ Gerry McNeilly, *Policing the Right to Protest – G20 Systemic Review Report* (Ontario: Office of the Independent Police Review Director, 2012) at 231-232.

Recommendation No. 38:**Amendment to Board Policy LE-016 – Prisoner Care and Control to ensure separation of male, female, transgendered, and transsexual prisoners**

The Board should amend Board Policy LE-016 – Prisoner Care and Control to provide that where male, female, transsexual, and transgendered persons are to be detained in the same facility specific measures are taken to separate completely male, female, transsexual, and transgendered prisoners.

x. Personal property

The PPC Plan contained a specific Property Bureau Plan (Appendix 5 to the PPC Plan).²⁰⁴ The purpose of this plan was to ensure that potential evidence was properly seized and stored without the need to attend at a police facility. A designated property room was designed at the PPC which was staffed by Toronto Police Service officers and three Toronto Police Service civilian members from the Property and Evidence Management Unit (“PEMU”).²⁰⁵ In addition, eight members of PEMU were deployed in vans to provide mobile support to officers making arrests in the field.²⁰⁶ In both instances, all prisoner property was to be inventoried and secured according to standard Toronto Police Service procedures.²⁰⁷ As part of the standard booking process in Toronto Police Service divisional facilities, a prisoner’s property is inventoried on camera and entered into the Criminal Information Processing System. Investigators then determine what is required for evidence and what can eventually be returned to the prisoner.²⁰⁸ Potential evidence is then seized and provided to PEMU for preservation. At the PPC, prisoners’ personal effects (as opposed to evidence) were to be inventoried on camera and returned to prisoners on their release from the facility.²⁰⁹

During the G20 Summit, the arresting officer determined at the scene of the arrest what was required as evidence and what were personal effects. The Toronto Police Service *After-Action Review* indicated that, given the volume of arrests, a number of property bags containing prisoners’ personal property were not always itemized thoroughly by arresting officers at the scene of the arrest and some bags contained only limited information about their contents.²¹⁰ It was difficult, therefore, in some instances to link property to its owner. The volume of the property seized also overwhelmed the property room at the PPC. This led to personal effects being stored

²⁰⁴ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 134-140.

²⁰⁵ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 137.

²⁰⁶ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 137.

²⁰⁷ Toronto Police Service G20 Operational Plan, Chapter 17: The Prisoner Processing Centre (3 March 2010) at 137.

²⁰⁸ Toronto Police Service Procedure 01-03 – Persons in Custody (issued 3 March 2010); Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

²⁰⁹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

²¹⁰ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

in various areas in the facility outside of the designated property room.²¹¹ In addition, different processes were used to deal with property, which changed between shifts. Combined, these factors meant that significant delays occurred as prisoners were being released from the PPC and their property was being located. In some instances, prisoners were released without their personal effects having been returned to them.²¹²

xi. Persons with disabilities

The PPC Plan did not make any particular provision for prisoners with disabilities. While I am not aware of any issues concerning the provision of proper accommodation to persons with disabilities, for completeness, the PPC Plan should have addressed the issue.

G. CONCLUSION

The planning for the PPC and its operation during the G20 Summit were particularly demanding. The PPC Planning Team possessed no specific experience in designing detention facilities. Nonetheless, these officers were asked to design an unprecedented mass-detention facility in only 4 months. The decision to acquire a prisoner processing facility was made in February 2010 and the PPC began operations on June 18, 2010.

The PPC included the technical requirements of a prisoner processing and detention facility, including video and IT equipment, and the PPC Plan replicated standard Toronto Police Service procedures, with certain adaptations. However, the PPC Plan did not contain the detailed processes and procedures required to operate a detention facility, and standard Toronto Police Services procedures were adopted without adaptation. This absence of detailed procedures was clearly exposed during the G20 Summit and, in certain instances, was exacerbated by modifications to the PPC Plan made by the operational commander during the G20 Summit itself. The delays and consequent problems caused by those changes rippled through the whole system.

The application by the Board of the recommended consultation protocol may have highlighted policy gaps or shortfalls in the PPC Plan and may have helped avoid some of the problems encountered during the G20 Summit. The Board was the body that was responsible for the adequacy and effectiveness of a facility like the PPC. However, without adequate information or a detailed understanding of how that facility was expected to operate, it was unable to exercise that responsibility.

As a result, large numbers of arrested persons taken to the PPC for processing were detained for extended periods of time caused by a breakdown in prisoner processing, which affected the conditions under which they were detained.

²¹¹ Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

²¹² Toronto Police Service, *G20 Summit After-Action Review* (June 2011) at 50.

APPENDIX A: TERMS OF REFERENCE

Toronto Police Services Board

Terms of Reference for the Independent Civilian Review

WHEREAS the Toronto Police Services Board ("the Board") is responsible, pursuant to section 31(1) of the *Police Services Act*, R.S.O. 1990, c. P.15 ("the Act"), for the provision of adequate and effective police services in the City of Toronto;

AND WHEREAS the Board must, pursuant to section 31(1) of the Act, generally determine after consultation with the Chief of the Toronto Police Service ("the Chief") objectives and priorities with respect to police services for the City of Toronto, establish policies for the effective management of the Toronto Police Service and direct the Chief and monitor his performance;

AND WHEREAS the Toronto Police Service played a lead role along with other federal, provincial and municipal police agencies and other security agencies in the development and implementation of strategies for policing the G20 meeting of world leaders ("the G20") that was held in Toronto, from June 25 through June 27, 2010;

AND WHEREAS the Board believes that it would be beneficial and of assistance to the Board in carrying out its responsibilities pursuant to section 31(1) of the Act to conduct a Review of the role played by the Toronto Police Service in developing and implementing the strategies for policing the G20 to determine whether those strategies were adequate and effective police services and to conduct a Review of the role of the Board with respect to the planning for and policing of the G20;

THEREFORE the Board is appointing the Reviewer to conduct an Independent Civilian Review (the "Review") into the role played by the Toronto Police Service in the development and implementation of the strategies for policing the G20,

AND to conduct the Review the Reviewer shall be provided with such resources as are required, and be authorized by the Board and shall have the authority to engage lawyers, experts, research and other staff as the Reviewer deems appropriate, at reasonable remuneration approved by the Board;

AND the Chief will cooperate fully with the Reviewer in conducting the Review;

AND the Chair and members of the Board will cooperate fully with the Reviewer in conducting the Review and will instruct all personnel employed by the Board to cooperate fully with the Reviewer in conducting the Review;

AND the Reviewer may request any person, organization, the Chief and any personnel employed by the Board to provide relevant information or records, including video recordings, for the Review where the Reviewer believes that the person or organization has such information or records in his, her or its possession, custody or control;

2

AND the Reviewer may hold such public or private meetings, interviews and consultations, and may make such procedural decisions with respect thereto, as the Reviewer deems advisable in the course of the Review;

AND the Reviewer shall conduct the Review and make a report to the Board without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization and without interfering in any ongoing criminal, civil or other legal proceedings;

AND the Reviewer may produce an interim report at the Reviewer's discretion and shall produce a final report containing the Reviewer's findings, conclusions and recommendations and deliver it to the Chair and members of the Board for distribution to the public;

AND the reports shall be prepared in a form appropriate for release to the public, pursuant to the Freedom of Information and Protection of Privacy Act;

AND these Terms of Reference shall be interpreted in a manner consistent with the limits of the jurisdiction of the Board;

AND in the event that the Reviewer is unable to carry out any individual term of these Terms of Reference, the remainder of the Terms of Reference shall continue to operate, it being the intention of the Board that the provisions of these Terms of Reference operate independently;

AND the subject matter of the Review shall be:

Pre-G20

1. (a) A review of whether or not after Toronto was selected as the location for the G20, the Toronto Police Service had sufficient time to adequately develop a framework and plan the strategy for policing the G20 and to provide adequate information to the Board so that the Board had sufficient time to discharge its responsibilities pursuant to the Act.

(b) A review of the role that the Toronto Police Service played in developing the framework and plan for policing the G20.

(c) A review of the role played by the Toronto Police Service in the command structure for the policing of the G20, including whether the fact that a number of other police agencies and security agencies were involved with the Toronto Police Service impacted on the Toronto Police Service delivery of police services or created complications in the command structure during the G20.

2. (a) A review of the information given to the Board by the Toronto Police Service and other agencies concerning the framework and plan for policing the G20 and the issues

that were anticipated to arise in connection with the policing of the G20 and whether it was adequate to allow the Board to discharge its responsibilities pursuant to the Act.

(b) A review of any issues or problems faced by Board members with respect to the information that they received, or felt that they ought to have received, having regard to the multi-faceted nature of the responsibilities that Board members had within the City of Toronto governance structure and/or with respect to the community;

(c) A review of the briefings with respect to G20 policing issues that were provided to the Board by the Toronto Police Service and other City of Toronto officials and whether the manner in which the Board received the information was adequate to allow the Board to appropriately consider it.

3. With respect to the following matters, a review of the information that the Board was given, if any, and the role, if any, the Board played in:

- (i) considering and approving the framework and the strategy for the policing of the G20 including the command structure;
- (ii) considering and approving any request of the Ontario government by the Toronto Police Service for additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10;
- (iii) erroneously communicating to the public or in failing to correct an erroneous communication to the public by the Toronto Police Service that Regulation 233/10 applied to a five-meter zone outside the security fence;
- (iv) considering and approving directions or instruction that would be given to or by police officers with the Toronto Police Service who were going to be performing policing duties at the G20 with respect to:
 - (a) their obligations under the Charter of Rights and Freedoms and under the Criminal Code,
 - (b) demanding identification from people,
 - (c) their powers to search individuals without a search warrant,
 - (d) their powers to arrest individuals without an arrest warrant, and
 - (e) the use of force on people participating in a demonstration.
- (v) considering and approving the use of a strategy, colloquially known as "kettling", for detaining and/or arresting people participating in a demonstration;
- (vi) entering into agreements relating to police officers who were not with the Toronto Police Service but who were assisting with the policing of the G20 with respect to whether or not or how they would be held accountable for their conduct while assisting with the policing of the G20;
- (vii) negotiating contracts, setting or approving budgets, making decisions with respect to human resource issues and procurement issues relating to the policing of the G20 and was the role that the Board played appropriate.

- (viii) considering and approving the principles and policies governing the design of and/or the use that would be made of the Prisoner Detention Centre.
4. (a) Was the information given to the Board by the Toronto Police Service and relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing services provided to the City of Toronto during the G20.
- (b) Did the Board ask appropriate questions of the Chief and of relevant City of Toronto officials sufficient to allow the Board to properly discharge its responsibilities under the Act in relation to the policing service provided to the City of Toronto during the G20.
5. (a) Did the Board have policies in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they.
- (b) Did the Board have policies in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they.
6. (a) Did the Toronto Police Service have procedures in place prior to the G20 for dealing with crowd control at mass demonstrations and, if so, what were they and did the Toronto Police Service monitor compliance with them.
- (b) Did the Toronto Police Service have procedures in place prior to the G20 requiring police officers with the Toronto Police Service to wear name badges and/or police badge numbers while on duty and, if so, what were they and did the Toronto Police Service monitor compliance with them.
7. (a) What role, if any, did the Toronto Police Service play in requesting additional legal powers to protect an area inside the security fence that resulted in the passing of Ontario Regulation 233/10.
- (b) What role, if any, did the Toronto Police Service play in erroneously communicating to the public or in failing to correct an erroneous communication to the public that the additional legal powers contained in Regulation 233/10 applied to a five-meter zone outside the security fence.
8. What policies and principles were used to design the Prisoner Detention Centre on Eastern Avenue with respect to medical care for prisoners, access to lawyers, access to Duty Counsel, housing of prisoners with disabilities, housing of young people, access of young people to their parents, strip searches of prisoners, supply of food and water for prisoners, access to toilet facilities, personal property of prisoners, and releasing prisoners without charge. Were there any difficulties in the implementation of the policies and principles. Was the Prisoner Detention Centre adequate with respect to these policies and principles.

During the G20

9. (a) What were the reasons that the Toronto Police Service gave orders or instructions to disperse demonstrators from the designated demonstration area at Queen's Park on June 26, 2010.

(b) What were the reasons that the Toronto Police Service gave orders or instructions to detain and/or arrest people participating in a demonstration on The Esplanade on June 26, 2010.

(c) What were the reasons that the Toronto Police Service approved of and used a strategy, colloquially known as "kettling", at Queen Street and Spadina Avenue during the evening on Sunday, June 27, 2010 for detaining and/or arresting people participating in a demonstration.

(d) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, in response to the situation that arose when people were destroying Toronto Police Service police cruisers and damaging other property in and around the financial district, and on and around Yonge Street and Queen Street.

(e) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, with respect to the use of tear gas or some similar substance to disperse people outside the Prisoner Detention Centre on the morning of June 27.

(f) What orders or instructions were given by the Toronto Police Service, and what were the reasons for them being given, to police officers with the Toronto Police Service or were given by officers with the Toronto Police Service to police officers who were not with the Toronto Police Service but who were assisting with the policing of the G20 with respect to:

- (i) their obligations under the Charter of Rights and Freedoms and the Criminal Code,
- (ii) demanding identification from people,
- (iii) conducting searches of individuals and their property without a search warrant,
- (iv) arresting people without an arrest warrant, and
- (v) the use of force towards people participating in a demonstration.

10. Did police officers with the Toronto Police Service remove or cover their name badges or police badge numbers during the policing of the G20 contrary to Toronto Police Service and Board policy.

11. Did the nature of the demonstrations and the actions of some people who were demonstrating differ from the previous experience of the Toronto Police Service and

what impact, if any, did it have on the Toronto Police Service management of the policing of the G20.

Recommendations

12. In addition to reviewing and reporting on policing by the Toronto Police Service during the G20, the Reviewer should make such recommendations as the Reviewer deems fit to assist the Board in discharging its responsibilities pursuant to the Act, including, but not limited to, recommendations:

- i) to assist the Board in formulating policies relating to all aspects of the policing of mass demonstrations, including policies relating to the command and control structure relating thereto;
- ii) to assist the Board in assessing its practices with respect to the manner in which it receives information during Board briefings by the Toronto Police Service and others;
- iii) with respect to the role of the Board in communicating to the public when extraordinary policing measures are being taken as a result of special circumstances; and,
- iv) with respect to whether the Act ought to be amended to clarify the role and responsibilities of the police service boards in Ontario and to clarify the role and responsibilities of police agencies in Ontario with respect to providing information to their respective police service boards, particularly in circumstances where the police agency is interacting with or has interacted with other police and/or security agencies, including the Integrated Security Unit.

Approved at Toronto, Ontario this 23rd day of September, 2010.

_____"Alok Mukherjee"_____
Dr. Alok Mukherjee,
Chair, Toronto Police Services Board

APPENDIX B: PROCEDURAL GUIDELINES

- 1 -

INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

PROCEDURAL GUIDELINES

A. General

1. This review (the "Review") will be governed by the "Terms of Reference."
2. Subject to the Terms of Reference, the conduct of, and procedure to be followed during the Review is under the control and direction of the Reviewer.
3. The Reviewer may amend these Procedural Guidelines ("Guidelines") or dispense with compliance of them, as he deems necessary, to ensure that the Review is thorough, fair and timely.
4. In these Guidelines, "person" refers to an individual, group, governmental body, agency, institution, or any other organization or entity. In these Guidelines, "representative person" refers to an individual who is authorized to give information to the Review on behalf of a group, governmental body, agency, institution, or any other organization or entity.
5. The Reviewer may deal with any non-compliance with these Guidelines as may be appropriate having regard to all relevant circumstances.
6. In these Guidelines, the term "documents" is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.
7. The Reviewer may receive any information that may be helpful in fulfilling his mandate, whether or not such information would be admissible in a court of law.
8. Subject to relevant legislation, the Reviewer may impose measures to address issues of privacy and confidentiality that may arise during the Review.
9. In these Guidelines, words in the singular include the plural, and words in the plural include the singular.

B. Investigation

10. The Review will commence with an investigation by the Reviewer, assisted by Review counsel and support staff. The goal of the investigation, in part, will be to

- 2 -

identify core or background facts of relevance, and to identify representative witnesses:

11. The investigation will consist primarily of document review, consultation with interested persons, and witness interviews and consultations.

C. Document Production

12. After a person or representative person receives a request for information from the Review, copies of all documents relevant to the request should be produced to the Reviewer at the earliest opportunity. The Reviewer will not consider the production of a document to be a waiver of any privilege that may attach to that document, and which any person or representative person may wish to assert in the future. A person or representative person should, however, identify to the Reviewer, within a reasonable time period, any documents over which it intends to assert a claim of privilege.
13. Where a person or representative person, or their counsel, takes the position that a document is privileged, the Reviewer, Review counsel, and all members of the Review support team, will sign an undertaking that states the limited purpose for which the document is to be produced, provides that the document will not be produced to any other person unless required by law, and declares that the Reviewer does not consider the production of documents to be a waiver of any privilege that may attach to a document.
14. Original copies of relevant documents are to be provided to the Review only upon request and where doing so would not interfere with any potential or ongoing investigation or legal proceeding. Persons and representative persons will otherwise preserve originals of relevant documents until such time as the Reviewer has delivered his final report.
15. Where the Reviewer seeks to produce documents to a person, representative person, or their counsel, these documents will be produced only upon the execution of a written undertaking that all such documents and information will be used solely for the purposes of the Review.
16. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect.
17. The Reviewer may require that the documents provided, and all copies made, be returned to the Review.

- 3 -

D. Overview Summaries

18. Where the Reviewer is of the view that it would enhance the efficiency of the Review, a summary may be prepared concerning matters which are identified in the Terms of Reference ("Overview Summary").
19. An Overview Summary shall provide an objective summary of core facts, together with their source(s), which are relevant, for the purposes of background, to matters which are identified in the Terms of Reference. An Overview Summary may also identify cases where there are factual matters that are unknown or which require clarification.
20. The Review may provide an Overview Summary to a person or representative person and seek comment on the accuracy of the Overview Summary.

E. Interviews and Consultations

21. Interviews and consultations will be conducted in the manner set out in these Procedural Guidelines.
22. The Reviewer will identify persons and representative persons for the purpose of conducting interviews and consultations. Without any limitation to the foregoing, the Reviewer may consult with experts, academics and other persons on issues relevant to the Review.
23. The Reviewer will set the dates, hours and place of the interview and consultation. The Reviewer will determine, in his sole discretion, whether an interview and consultation will be held privately or publicly, and what type of record may be kept of the interview or consultation.
24. Where possible, the Reviewer will provide persons or representative persons, or their counsel, if applicable, with a listing or summary of issues to be canvassed at the interview and consultation.
25. Persons and representative persons may propose names of other persons or representative persons that the Reviewer should interview and/or consult with. In particular, persons and representative persons may propose other persons or representative persons who are likely to contribute to an understanding of the policy issues relevant to this Review and whose information is likely to assist the Reviewer in making recommendations.
26. It remains entirely within the Reviewer's discretion to refuse to interview or consult with a proposed person or representative person. The Reviewer will exercise his discretion having regard to, among other things, the information already available and obtained concerning the subject(s) on which the proposed person or representative person could comment.

- 4 -

27. A person or representative person is entitled to have counsel present during any interview and consultation. Counsel for the person or representative person will be permitted to make objections during the interview and consultation, having regard to the Review's Terms of Reference and other valid grounds.
28. A person or representative person may be requested to participate in an interview and consultation more than once.
29. In the ordinary course, Review counsel will lead the interviews and consultations on behalf of the Reviewer, but the Reviewer may, at any time, ask questions of the person or representative person.
30. Counsel for a person or representative person may request that the Reviewer permit them to ask questions of their client.
31. Review counsel may ask further questions of a person or representative person if their counsel ask questions of their client.

F. Use of Documents at Interviews and Consultations

32. In advance of a person's or representative person's interview and consultation, the Reviewer will provide reasonable notice of a list of the documents associated with the issues that will be discussed or canvassed at the interview and consultation.
33. In advance of a person's or representative person's interview and consultation, the person or representative person, or their counsel, shall provide the Reviewer with reasonable notice of any documents that may be associated with the issues that will be discussed or canvassed at the interviews and consultations.
34. The Reviewer may grant Review counsel, or counsel for a person or representative person, leave to introduce a document at any point during the interviews and consultations.

G. Expert Panels / Research and Policy Papers / Public Input

35. Due to the systemic nature of some of the issues that may be explored during the Review, the Reviewer may utilize a range of research and policy development processes, including, but not limited to:
 - (a) research and policy papers (the "Research and Policy Papers") from recognized experts on a broad range of relevant topics. The structure and format of the Research and Policy Papers may vary but will generally include a description of current practices, historical developments, an analysis of relevant issues, and potential options (if applicable). Research and Policy Papers will be posted on the

- 5 -

Review's website. Research and Policy Papers will not necessarily represent the views of the Reviewer, but will be designed to inform the Reviewer's deliberations on systemic issues;

- (b) written and/or oral submissions that may be sought from persons, representative persons, and the public about matters relevant to the Terms of Reference, including the Research and Policy Papers; and
- (c) meetings or symposia (the format of which may vary) that may be convened to discuss issues raised by the Review at which persons, representative persons, and members of the public may be invited to participate.

September 28, 2010

APPENDIX C: MEDIA RELEASES RELATING TO THE PUBLIC CONSULTATIONS



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

G20 REVIEW TO HOLD PUBLIC HEARINGS IN TORONTO

For Immediate Release

Toronto, May 12 – The Independent Civilian Review Into Matters Relating to the G20 Summit will hold three hearings in Toronto on **June 1, 6, and 13, 2011**. The hearings will provide individual members of the public, organizations, and other stakeholders with an opportunity to share their views and opinions on the role that civilian oversight should play concerning the policing of major events. The hearings will be open to the public.

Details of the three hearings are as follows:

	Hearing Day #1	Hearing Day #2	Hearing Day #3
Date	Wednesday, June 1, 2011	Monday, June 6, 2011	Monday, June 13, 2011
Time	5:30 p.m. to 9:00 p.m.	5:30 p.m. to 9:00 p.m.	5:30 p.m. to 9:00 p.m.
Location	Metro Hall	Etobicoke Civic Centre	Scarborough Civic Centre
Address	55 John Street Toronto, ON M5V 3C6	399 The West Mall Toronto, ON M9C 2Y2	150 Borough Drive Toronto, ON M1P 4N7

About the Review

The Independent Civilian Review Into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit of world leaders that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations to the Board.

For more information about the Review, including the public hearing process, please visit www.g20review.ca.

– 30 –

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INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

PRESS RELEASE

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G20 Review Seeks Public Input

Toronto, May 25 – The G20 Review is looking for input. Going forward, what lessons should shape policing policies for future major events? At three public hearings across Toronto, individuals are invited to speak and share their ideas and recommendations.

On June 1, 6, and 13, 2011, the Review will hold three hearings in Toronto. This is a rare and valuable opportunity to contribute to the fair and reasonable governance of Toronto's Police Service. This is the first and only set of hearings where the public's input will be gathered and presented to the body that establishes policies for the effective management of the Toronto Police Service.

Formally, the hearings will provide individual members of the public, organizations, and other stakeholders an opportunity to share their views and opinions on the role that civilian oversight should play concerning the policing of major events. Informally, it is extremely important that the public has a safe and actionable opportunity to voice its concerns and make suggestions, should any exist.

	First Hearing	Second Hearing	Third Hearing
Date	Wednesday June 1 st , 2011	Monday June 6 th , 2011	Monday June 13 th , 2011
Time	5:30 - 9:00 pm	5:30 - 9:00 pm	5:30 - 9:00 pm
Location	Metro Hall 55 John Street Toronto, ON M5V 3C8	Eglinton Civic Centre 399 The West Mall Toronto, ON M9C 2Y2	Scarborough Civic Centre 150 Borough Drive Toronto, ON M1P 4N7

To guarantee one of the five minute spots to speak at any one of the three hearings, individuals must complete a simple application form available here: www.g20review.ca/submissions.php. In an effort to give as many people as possible the opportunity to speak at each hearing, the deadline for submissions has been extended to Tuesday May 31st. Submissions are being accepted on a first come basis. The hearings will be open to the public and all are welcome to attend to observe the presentations.

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

For more information visit www.g20review.ca. For regular updates see twitter.com/g20review.



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

PRESS RELEASE

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T 416 643.6890 / F 416 360.8425
rteschner@heenan.ca

G20 Review Seeks Public Input

Toronto, May 31 – The first of three public hearings concerning the G20 Review will take place this Wednesday, June 1st at Toronto's Metro Hall.

This is a rare and valuable opportunity for the public to offer insight as to *what role civilian oversight should play concerning the policing of major events*. Input from these hearings will form part of a report presented to the body that establishes policies for the effective management of the Toronto Police Service.

Submissions to speak are being accepted until and of day on Tuesday May 31st at www.g20review.ca/submissions.php. Any remaining speaking slots for the hearing may be claimed on a first come basis. Speakers can register upon arrival.

This hearing will be open to the public and all are welcome to attend and observe.

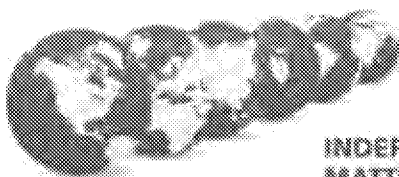
Wednesday June 1st, 2011
5:30 - 9:00pm
Metro Hall
55 John Street
Toronto, Ontario
M5V 3C6

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

Future hearings are set for June 6th and 13th at the Etobicoke Civic Centre and Scarborough Civic Centre, respectively.

For more information visit www.g20review.ca. For regular updates see twitter.com/g20review



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

PRESS RELEASE

Ryan Teschner
Review Counsel
Heenan Blaikie LLP

G20 Review Public Hearings Open Today

Toronto, June 1 – The first of three public hearings concerning the G20 Review will take place tonight at Toronto's Metro Hall. Individuals representing their personal views and some representing specific organizations have registered to speak at this hearing. Those that have not yet registered will be given the opportunity to sign up at the event.

Should any speaking slots remain open, they will be filled on a first come basis. The main focus of this public hearing is to determine *what role civilian oversight should play concerning the policing of major events?* Input from these hearings will form part of a report presented to the body that establishes policies for the effective management of the Toronto Police Service.

This public hearing is open to all who wish to attend and observe. Attending media can register upon arrival.

Wednesday June 1st, 2011
5:30 - 9:00pm
Metro Hall
55 John Street
Toronto, Ontario M5V 3C6

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

Future hearings are set for June 6th and 13th at the Etobicoke Civic Centre and Scarborough Civic Centre, respectively. For more information visit www.g20review.ca. For updates see wiltor.com/g20review.

For information and media inquiries, contact Juliana at 1.877.477.3250.

**APPENDIX D: PUBLIC CONSULTATION SUBMISSION
FORM**



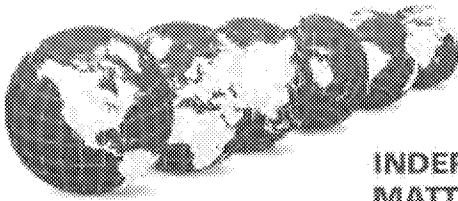
INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

GUIDELINES FOR SUBMISSIONS

1. All persons, organizations, community groups or other members of the public who wish to speak at one of the Review's public hearing **must fill out and complete this Submission Form.**
2. When completing the Submission Form, please ensure that you use only the space provided. Additional pages will not be accepted or reviewed.
3. Once the Submission Form has been completed, it must be delivered to the Independent Civilian Review Into Matters Relating to the G20 Summit by **no later than 5:00 p.m. on May 25, 2011.**
4. The Submission Form can be returned to the attention of the Independent Civilian Review Into Matters Relating to the G20 Summit by e-mail (contact@g20review.ca), **regular mail** (Bay Adelaide Centre, 333 Bay St., P.O. Box 2900, Suite 2900, Toronto, ON M5H 2T4) or **facsimile** (1-888-345-9769).
5. Please note that completion of a Submission Form **does not guarantee** an opportunity to speak at the public consultation hearing. In light of the high number of anticipated requests to make submissions, the Independent Civilian Review Into Matters Relating to the G20 Summit will accept and carefully review all Submission Forms, and will select a sample that adequately reflects diverse interests and views.

GUIDELINES FOR PUBLIC HEARING

1. In the case of community groups, organizations or other associations, only **one** person from your organization may make submissions at the public hearing, unless the moderator permits additional representatives to do so and sufficient time is available.
2. At the public hearing, please confine your comments to the specific issue identified in this Submission Form. The moderator has the right to preserve the orderly development of the hearing process, and may interrupt a participant if their commentary is not related to the topic of discussion.
3. Participants will be required to register before entering the hearing, providing their name and/or the group or organization they are representing.
4. Participants will make submissions in the order in which they appear on the registration list.
5. Each participant has a **maximum of five minutes** to speak. The moderator has the right to interrupt a participant if his/her allotted time has expired. Participants will be given a one minute warning before their time is up. It is important to respect the time limit imposed to ensure all those who will be speaking are given a fair opportunity.



**INDEPENDENT CIVILIAN REVIEW INTO
MATTERS RELATING TO THE G20 SUMMIT**

SUBMISSION FORM FOR PARTICIPATION AT PUBLIC HEARING

Name of Participant: _____	Organization Name: _____
Address: _____	Address: _____
City/Prov: _____	City/Prov: _____
Phone: _____	Phone: _____
Email: _____	Email/Website: _____

.....

Background Information: Please tell us about yourself. If you represent an organization, please provide a brief description of your organization (its size, history, mission and membership).

Please hit ENTER twice after each line.

Participant in the G20: If you or a member(s) of your organization participated in any aspect of the G20 Summit, please briefly describe your involvement.

Please hit ENTER twice after each line.

The Location, Date and Time: There will be three separate public consultation hearings across Toronto. The following is the location, date and time for each of the hearings:

	Hearing Day #1	Hearing Day #2	Hearing Day #3
Date	Wednesday, June 1, 2011	Monday, June 6, 2011	Monday, June 13, 2011
Time	5:30 p.m. to 9:00 p.m.	5:30 p.m. to 9:00 p.m.	5:30 p.m. to 9:00 p.m.
Location	Metro Hall	Eglinton Civic Centre	Scarborough Civic Centre
Address	55 John Street Toronto, ON M5V 3C6	399 The West Mall Toronto, ON M9C 2Y2	150 Borough Drive Toronto, ON M1P 4N7

The Issue: The Independent Civilian Review Into Matters Relating to the G20 Summit will hear submissions on the following issue:

***WHAT ROLE SHOULD CIVILIAN OVERSIGHT PLAY WITH RESPECT TO THE
POLICING OF MAJOR EVENTS?***

What is civilian oversight? To assist you in preparing submissions that respond directly to the above-noted issue, the following is a brief summary of what role civilian oversight plays generally with respect to the Toronto Police Service.

Civilian Oversight of Policing in Toronto: The Toronto Police Services Board is the civilian oversight body of the Toronto Police Service. Under Ontario's *Police Services Act* (a provincial statute that governs all police services in Ontario), the Toronto Police Services Board is responsible for the provision of "adequate and effective police services." This includes setting policies and making rules for the effective management of the police force and determining, in consultation with the chief of police, objectives and priorities for the police service. The Toronto Police Services Board is also responsible for hiring the chief of police, setting an annual budget for the Toronto Police Service, and approving and entering into collective bargaining with police personnel. The chief of police is then responsible for implementing the Board's policies and meeting established priorities through the day-to-day operations of the police service. The Chief of Police is accountable to the Toronto Police Services Board.

Please provide a brief summary of the submissions you would like to make on the issue identified above: (please use only the space provided below.)

Please hit ENTER twice after each line.

Deadline for Submission Form: Wednesday, May 25, 2011

Please return the Submission Form to the attention of
The Independent Civilian Review on Matters Relating to the G20
 by:

Email: contact@g20review.ca

-or-

Regular Mail: Bay Adelaide Centre, 333 Bay St., P.O. Box 2900,
Suite 2900, Toronto, ON M5H 2T4

-of-

Fax: 1-888-345-9769

IMPORTANT

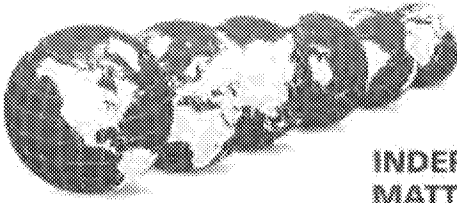
The Independent Civilian Review Into Matters Relating to the G20 Summit will not hear comments from individuals or organizations participating in the public consultation process concerning complaints about particular police officers.

The Office of the Independent Police Review Director (OIPRD) oversees the investigation of public complaints against police in Ontario and ensures that these complaints are dealt with fairly, efficiently and effectively. If you have a complaint about the conduct of a police officer(s) or about the services of the Toronto Police Service, you may file a formal complaint by contacting the OIPRD directly by calling their toll free number: 1-877-411-4773. For more information about how to make a complaint or to learn more about the public complaints system, please visit the OIPRD website at <http://www.oiprd.on.ca>.

For more information about the public consultation process please visit:

www.g20review.ca

**APPENDIX E: REQUEST FOR INFORMATION TO THE
TORONTO POLICE SERVICES BOARD, DATED 29
SEPTEMBER 2010**



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

September 29, 2010

Dr. Aick Mukherjee
Chair
Toronto Police Services Board
40 College Street
Toronto, Ontario
M5G 2J3

Dear Dr. Mukherjee:

Re: Request for Information and Documents Directed to the Toronto Police Services Board by the Independent Civilian Review of Matters Concerning the G20 Summit

Under the Terms of Reference of the Review approved by the Toronto Police Services Board ("the Board") dated September 14, 2010, I hereby request as soon as possible all information in the Board's possession, power or control, which may be responsive to the questions, issues or matters set forth in the Appendix to this Request. The questions, issues and matters ("the questions") are a reproduction of what is stated in the Terms of Reference to be "the subject matter of the review".

If all of the information is not immediately available, please deliver the material in instalments, when available, in order to facilitate the expedition of the Review. In any event, please forward all information to the Review by no later than October 29, 2010. In order to minimize expenses we would ask that the material be provided electronically, along with three hard copies.

For the purposes of this request, "information" means memoranda, letters, documents of any kind, policies, recommendations, assessments, calculations, discussions, commentaries, notes, minutes, transcripts, e-mails, electronic communications media, or other media of expression, including information:

- (a) in hard copy or electronic form;
- (b) in final or in draft form;
- (c) handwritten, typed or in any other form;
- (d) in audio, video or digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device; and
- (e) deleted but duplicated or maintained in emergency or storage databases.

John W. Edwards
Chairman

Scott Forester
Executive Director

Rebecca
(416) 461-5555

J. Neil
j.neil@icrreview.com

Mail Stop 1000
One Adelaide Avenue, 27th Floor
100 Adelaide Avenue, Suite 2700
Toronto, ON M5H 1A4

Website
www.icrreview.com

I recognize that, because of the terms, or subject matter, of a particular question it is not expected, or possible for the Board to respond to it. This can be noted as part of the Board's response to the question.

In responding to this Request, please include information that is in your possession, power, or control, even though it may have been authored or created for matters unrelated to the G20 Summit but which may bear on the questions in the Appendix, e.g. materials related to the training of Board members.

Information which the Board provides in response to the questions in each paragraph, and sub-paragraph in the Terms of Reference should be entitled and organized in accordance with the paragraph and sub-paragraph numbering in the Terms of Reference. This will assist in keeping the responsive information organized as the Review proceeds with its work.

It is expected that the responses of the Board and the Chief of Police (to whom we are also sending a Request) will be prepared by each of the Board and the Chief of Police alone without communication between them.

Please direct any questions or clarification concerning this request to Review Counsel, Mr. Ryan Teschner at 416-643-8890 or by e-mail at contact@g20review.ca.

Yours truly;



John W. Morden
Reviewer

c/o Heenan Blaikie LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario, M5H 2T4

Enclosure

Copy: Mr. Ryan Teschner, Review Counsel
Ms. Joanne Campbell, Executive Director, Toronto Police Services Board
Ms. Sandy Adelson, Senior Advisor, Toronto Police Services Board

HQ9902 - 815141Bv1

**APPENDIX F: REQUEST FOR INFORMATION TO THE
TORONTO POLICE SERVICE, DATED 30 SEPTEMBER
2010**



**INDEPENDENT CIVILIAN REVIEW INTO
MATTERS RELATING TO THE G20 SUMMIT**

September 30, 2010

William Blair
Chief
Toronto Police Services
40 College Street
Toronto, Ontario, M5G 2J3

Dear Chief Blair:

Re: Request for Information and Documents Directed to the Chief of Police by the Independent Civilian Review of Matters Concerning the G20 Summit

Under the Terms of Reference of the Review approved by the Toronto Police Services Board ("the Board") dated September 14, 2010, I hereby request as soon as possible all information in your possession, power or control, which may be responsive to the questions, issues or matters set forth in the Appendix to this Request. The questions, issues and matters ("the questions") are a reproduction of what is stated in the Terms of Reference to be "the subject matter of the review".

If all of the information is not immediately available, please deliver the material in instalments, when available, in order to facilitate the expedition of the Review. In any event, please forward all information to the Review by no later than October 29, 2010. In order to minimize expenses we would ask that the material be provided electronically, along with three hard copies.

For the purposes of this request, "information" means memoranda, letters, documents of any kind, policies, recommendations, assessments, calculations, discussions, commentaries, notes, minutes, transcripts, e-mails, electronic communications media, or other media of expression, including information:

- (a) in hard copy or electronic form;
- (b) in final or in draft form;
- (c) handwritten, typed or in any other form;
- (d) in audio, video or digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device; and
- (e) deleted but duplicated or maintained in emergency or storage databases.

John W. Morden
Review

Ryan Teuchner
Assistant Review

Phone
(416) 977-2222

E-Mail
jrmorden@review.ca

Mailing Address
Bay Adelaide Centre, 240 Bayview
Room 2000, Suite 2000
Toronto, Ontario M5H 1A5

Website
www.icrm.ca

I recognize that, because of the terms, or subject matter, of a particular question it is not expected, or possible, for you to respond to it. This can be simply noted in your response to the question.

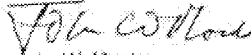
In responding to this Request, please include information that is in your possession, power, or control, even though it may have been authored or created for matters unrelated to the G20 Summit but which may bear on the questions in the Appendix, e.g., and by way of example only, reference may be made to the established procedures and processes in respect of the following matters referred to in O. Reg. 3/99, s. 13 (1): joint forces operations (s. 13 (1)(b)); crime, civil and public disorder analysis (s. 13 (1)(d)); search of the person (s. 13 (1)(h)); arrest (s. 13 (1)(j)); prisoner care and control (s. 13 (1)(l)); prisoner transportation (s. 13 (1)(m)). We refer also to the manual referred to in s. 19 (2) respecting public order unit services.

Information which you provide in response to the questions in each paragraph, and sub-paragraph in the Terms of Reference should be entitled and organized in accordance with the paragraph and sub-paragraph numbering in the Terms of Reference. This will assist in keeping the responsive information organized as the Review proceeds with its work.

It is expected that the responses of the Board (to whom we are also sending a Request) and the Chief of Police will be prepared by each of the Board and the Chief of Police alone without communication between them.

Please direct any questions or clarification concerning this request to Review Counsel, Mr. Ryan Teschner at 416-643-6890 or by e-mail at contact@g20review.ca.

Yours truly,

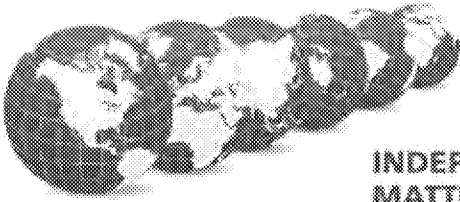

John W. Morden
Reviewer

c/o Heenan Blaikie LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario, M5H 2T4

Copy: Mr. Ryan Teschner, Review Counsel

HBdocs - 3154044v1

APPENDIX G: REQUEST FOR INFORMATION TO THE RCMP, DATED 2 DECEMBER 2010



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

Via electronic mail to caroline.leclerc@rcmp-grc.gc.ca

December 2, 2010

Ms. Caroline Leclerc
Counsel
Royal Canadian Mounted Police
Legal Services Unit
1200 Vanier Parkway
Nicholson Building
Room C400
Ottawa, Ontario K1A 0R2

Dear Ms. Leclerc:

**Re: Request for Information and Documents Directed to the
Royal Canadian Mounted Police by the Independent Civilian
Review of Matters Concerning the G20 Summit**

My Review Counsel, Mr. Ryan Teschner, was provided with your name by Division Operations Commander Alphonse MacNeil, with whom we have had some constructive communication. Division Operations Commander MacNeil indicated that any specific requests for information in the possession of the Royal Canadian Mounted Police ("RCMP") should be directed to you. I understand that you and Mr. Teschner had an opportunity to speak by phone today, and that he advised that we would follow-up by letter.

As you may know, I have been appointed the Reviewer by the Toronto Police Services Board to examine and report, from a policing perspective, upon certain aspects of the G20 Summit, held in Toronto on June 25-27 of this year. For your information, I have appended the full Terms of Reference of this Review.

The Honorable John L. McManus, M.P.
Minister

Ryan Teschner
Review Counsel

Phone
(416) 943-4143

E-Mail
caroline.leclerc@rcmp-gc.ca

Mailing Address
Cmty. Relations Centre, 203 Bay St.
110, Box 2000, Suite 2010
Toronto, Ontario M5G 2B4

Web site
www.icr-review.com

As you can appreciate, given the multi-jurisdictional nature of the policing and security operation required for the G20 Summit, certain aspects of the Toronto Police Service's role during the Summit required integration and cooperation with the RCMP. Specifically, I understand that this integration was managed by the Integrated Security Unit ("ISU"), of which, I understand, the RCMP was in command. In order for our Review to proceed and analyze the items outlined in the Terms of Reference, it will be vital to understand the nature of the relationship between the ISU, RCMP, and the Toronto Police Service.

In order to assist our Review, I would appreciate it if the RCMP would provide me with certain documents in its possession, power or control, which may include information concerning the following:

1. The overall policing and security command and control structure that was in place during the G20 Summit;
2. The relationship, from a policing and security perspective, between the ISU, RCMP and the Toronto Police Service;
3. The process, if any, that was instituted for the ISU's approval of policing and security plans that were developed by the Toronto Police Service;
4. The particular policing and security plans developed by the various policing and security services and ultimately submitted for approval to the ISU;
5. The "Integrated Security Plan" that was ultimately compiled and prepared for policing and security during the G20 Summit;
6. Any ISU or RCMP policies, procedures and/or standards that were applied to the activities of the Toronto Police Service prior to, or during, the G20 Summit. For example, if RCMP training policies or standards were applied to members of the Toronto Police Service, please provide these and any related correspondence or agreements concerning the applicability of these policies or standards to the Toronto Police Service;
7. Any 'Agreement of Principles' or similar agreement entered into between the ISU, RCMP, Toronto Police Service, and any other police or security service with responsibilities for policing and security during the G20 Summit; and
8. Any other documents or other information that the RCMP possesses which relates to the items listed in the enclosed Terms of Reference.

For the purposes of this request, "information" means memoranda, letters, documents of any kind, policies, recommendations, assessments, calculations, discussions, commentaries, notes, minutes, transcripts, e-mails, electronic communications media, or other media of expression, including information:

- (a) in hard copy or electronic form;
- (b) in final or in draft form;

- (c) handwritten, typed or in any other form;
- (d) in audio, video or digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device; and
- (e) deleted but duplicated or maintained in emergency or storage databases.

If possible, I would appreciate receiving any material the RCMP provides to the Review in electronic form, as this will expedite our document review process. It would also be of great assistance if the information which the RCMP provides be entitled and organized in accordance with the paragraph and sub-paragraph numbering in the Terms of Reference. This will assist in keeping the responsive information organized as the Review proceeds with its work. I understand that some of the information in our request may have been delivered in briefing form in the past, and if such briefings would be helpful in this context, please advise.

As you can appreciate, the ability of the Review to properly analyze the relevant issues and make informed recommendations will depend, in part, on being provided with relevant information. The unique nature of the policing and security operation for the G20 Summit required cooperation between various policing services. I sincerely hope that spirit of cooperation continues as this Review unfolds.

I appreciate that it may be useful to discuss some of the requests identified above further, and you should feel free to contact Mr. Teschner if you wish to do so. Mr. Teschner may be reached at 416-643-6890 or by e-mail at rteschner@heenan.ca. We look forward to hearing from you after you have had an opportunity to speak with personnel at the RCMP.

Yours truly,



John W. Morden
Reviewer

c/o Heenan Blaikie LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
P.O. Box 2900
Toronto, Ontario, M5H 2T4

Encl.

Copy: Mr. Kevin Brosseau, Senior Director, Operations [Commission for Public Complaints Against the RCMP]

Mr. Ryan Teschner, Review Counsel [Independent Civilian Review on Matters Relating to the G20 Summit]

APPENDIX H: MEDIA RELEASES



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

PRESS RELEASE

Ryan Teschner
Review Counsel
Heenan Blaikie LLP
T 416 643.6890 / F 416 360.8425
rteschner@heenan.ca

G20 Review Moves to Next Stages

Toronto, June 22 – The Independent Civilian Review into Matters Relating to the G20 Summit has completed its public hearings and will now move to the next stages of its work, including obtaining internal documents from the Toronto Police Service and then conducting interviews of key individuals.

On June 1, 6, and 13, 2011, the Review held three public hearings in Toronto. A number of individuals and organizations offered insight specifically on the Review's Terms of Reference and generally, on the role civilian oversight should play concerning the policing of major events, like the G20 Summit. The Review wishes to thank members of the public for their thoughtful input and ideas. The Review will continue to accept written submissions from members of the public until July 13, 2011. The submission form can be found on the Review's website: www.g20review.ca.

In addition, for the last several months, the Review has been examining thousands of documents in the Toronto Police Service's possession in order to identify which documents are relevant and require further review. In the next two weeks, the Review will submit its request for information to the Toronto Police Service for documents that relate to its Terms of Reference. The Review will then engage in a close analysis of the documents produced, and conduct interviews of the Chief of Police and members of the Police Services Board.

Once the document review phase is complete, the Review will provide an estimate as to when its final report and recommendations will be provided to the Board. The Review remains committed to conducting a thoughtful analysis of available information, and providing a report as soon as possible.

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched by the Toronto Police Services Board on September 23, 2010, as an independent, arms-length entity. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

FOR IMMEDIATE RELEASE

G20 Review Anticipates Release of Report in March 2012

Toronto, October 4 – The G20 Review has almost completed its analysis of thousands of documents, obtained from the Toronto Police Service, the Toronto Police Services Board, the Royal Canadian Mounted Police, and others. In addition, the G20 Review has conducted in-depth interviews with members of the Board, and interviews with Chief of Police William Blair will be completed by month's end.

Following the interview phase, the Honourable John W. Morden will turn his attention to writing the final report and recommendations for presentation to the Police Services Board. Mr. Morden's report will address the questions and issues outlined in the Terms of Reference, which were adopted by the Police Services Board, and which have governed the work of the Review.

The Review will work diligently on its report by relying on its own research, analyzing the information obtained through the document and interview processes, and considering the dozens of submissions received from members of the public who appeared at the public hearings in June 2011. The Review estimates that its report will be completed by **March 2012**.

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. The Review will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

For more information about the G20 Review, visit www.g20review.ca.

For information and media inquiries, contact Ryan Teschner, Review Counsel, at (416) 643-8890.



INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

FOR IMMEDIATE RELEASE

G20 Review: Update on Progress

Toronto, March 2 – Over the past several months, the G20 Review has been working diligently on the analysis of the questions and issues stated in its Terms of Reference and on its final report.

New documents and information were recently made available to the G20 Review and more relevant information is expected shortly. The analysis of these new documents and information will delay the completion of the final report. The G20 Review is committed to producing a final report that considers all available information.

The G20 Review will continue to work on its final report while simultaneously reviewing the new information that has and will be made available. The G20 Review understands the importance of producing an accurate and complete final report as expeditiously as possible. In order to keep the public informed, the G20 Review will provide an update concerning its progress by **April 13, 2012**. This update will include an estimate of when the final report will be complete for transmission to the Toronto Police Services Board.

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. It will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

For more information about the G20 Review, visit www.g20review.ca.

For information and media inquiries, contact Ryan Teschner, Review Counsel, at (416) 643-6890.

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INDEPENDENT CIVILIAN REVIEW INTO MATTERS RELATING TO THE G20 SUMMIT

FOR IMMEDIATE RELEASE

G20 Review: Estimated Time for Completion of Final Report

Toronto, April 13 – The G20 Review continues to work on its final report and analyze the questions and issues stated in its Terms of Reference. The G20 Review is committed to producing a final report that considers all available information and answers all of the questions or issues posed in the Terms of Reference developed by the Toronto Police Services Board.

The G20 Review still expects to receive some additional information from policing and security entities that were engaged in policing for the G20 Summit. However, the G20 Review has been drafting its final report while simultaneously examining the new information that has and will be made available.

At this time, the G20 Review estimates that its final report will be delivered to the Toronto Police Services Board by **Friday, June 29, 2012**. It is important to note that this date represents a best estimate based on the information that is currently available to the G20 Review and that the timeline is subject to change if new information becomes available or as a result of unanticipated delays.

About the Review

The Independent Civilian Review into Matters Relating to the G20 Summit was launched on September 23, 2010 by the Toronto Police Services Board. The Review will examine issues concerning the role the Board played with respect to the policing of the G20 Summit that was held in Toronto on June 25-27, 2010. It will also examine the role played by the Toronto Police Service during the G20 Summit, with a view to determining whether the plans developed and implemented were adequate and effective for policing of the Summit. The Board appointed the Honourable John W. Morden, a former Associate Chief Justice of Ontario, to conduct the Review and provide a report and recommendations.

For more information about the G20 Review, visit www.g20review.ca.

For information and media inquiries, contact Ryan Teschner, Review Counsel, at (416) 643-6890.

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**APPENDIX I: HIGH-LEVEL RESPONSIBILITY
ASSIGNMENT MATRIX (ROYAL CANADIAN MOUNTED
POLICE, *INTEGRATED PROJECT PLAN* (9 JUNE 2010))**

NB: See LEGEND Tab on Page 2 for RL R A C I Explanations		2010 G8-G20 ISU PARTNERS								
G8-G20 ISU TASKS/FUNCTIONS		G8-G20 ISU Commander	Integrated Planner	Project Manager	JIG	RCMP	OPP	CF	TPS	PRP
2010 G8-G20 ISU MISSION										
1	INTEGRATION									
1.1.1	Complete Project Charter	A	RL	R	R	R	R	R	C	C
1.1.2	Overall integration of Security Plans	A	RL	R	R	R	R	R	R	R
1.1.3	Agree on Roles and Responsibilities	A	RL	R	R	R	R	R	R	R
1.1.4	Integrate Geo Spatial Mapping	A	RL	R	R	R	R	R	R	R
1.2.1	Execute Project Management Processes	A	RL	R	R	R	R	R	R	R
1.2.2	Execute Integrated Risk Management	A	RL	R	R	R	R	R	R	R
1.2.3	Execute Lessons Learned Process	A	RL	R	R	R	R	R	R	R
1.2.4	Execute Project Reporting	A	RL	R	R	R	R	R	R	R
1.2.5	Execute Project Best Practices	A	RL	R	R	R	R	R	R	R
2	OPERATIONS									
2.1.1	Complete Deerhurst CAZ Security Plan	A	R	C	C	RL	R	C	I	I
2.1.2	Complete Deerhurst Interdiction Zone Security Plan	A	R	C	C	R	RL	C	I	I
2.1.3	Complete Deerhurst Surveillance Zone Security Plan	A	R	C	C	R	RL	C	I	I
2.1.4	Complete Deerhurst MANPAD Security Plan	A	R	C	C	RL	R	R	I	C
2.2.1	Complete MTCC CAZ Security Plan	A	R	C	C	RL	I	I	C	C
2.2.2	Complete MTCC Restricted Zone Security Plan	A	R	C	C	RL	I	I	R	C
2.2.3	Complete MTCC Interdiction Zone Security Plan	A	R	C	C	R	I	I	RL	C
2.2.4	Complete MTCC Traffic Zone Security Plan	A	R	C	C	R	R	I	RL	R
2.2.5	Complete MTCC Outer Perimeter Zone Security Plan	A	R	C	C	R	I	C	RL	I
2.2.6	Complete MTCC Toronto Pathway Security Plan	A	R	C	C	R	I	I	RL	I
2.3.1	Complete Weston Harbour Castle CAZ Security Plan	A	R	C	C	RL	I	I	R	I
2.3.2	Complete Weston Harbour Castle Interdiction Zone Plan	A	R	C	C	R	I	I	RL	I
2.4.1	Complete GTA Marine Security Plan	A	R	C	C	R	R	R	RL	R
2.5.1	Complete Deerhurst CBRNe Security Plan	A	R	C	C	R	RL	R	C	C
2.5.2	Complete GTA CBRNe Security Plan	A	R	C	C	R	R	R	RL	C
2.6.1	Complete Muskoka Accreditation	A	R	C	C	RL	R	R	I	I
2.6.2	Complete GTA Accreditation	A	R	C	C	RL	C	C	R	C
2.6.3	Complete LBPIA IFT Accreditation	A	R	C	C	RL	C	R	C	R
2.7.1	Complete G20 IPP Spousal Program Security Plan	A	R	C	C	RL	I	I	R	I
2.8.1	Complete Direct Energy Building Media Centre Security Plan	A	R	C	C	RL	R	I	R	I

2.9.1	Complete IPP Sheraton Hotel (Out of Reach Nations Level 3) Security Plan	A	R	C	C	RL	I	I	R	I
2.10.1	Complete IPP Movement Security Plan	A	R	C	C	RL	R	R	R	R
2.11.1	Complete Pearson International Airport (PIA) CAZ Security Plan	A	R	C	C	RL	C	R	C	R
2.11.2	Complete PIA Outer Perimeter Zone Security Plan	A	R	C	C	R	I	R	R	RL
2.11.3	Complete PIA MANPAD Security Plan	A	R	C	C	R	R	R	R	RL
2.12.1	Complete Air Security Plan	A	R	C	C	RL	R	R	R	C
2.13.1	Complete Community Relations Security Plan	A	R	C	C	R	RL	R	R	R
2.15.1	Create and employ Community Relations Group (CRG) Huntsville	A	I	I	C	R	RL	R	R	R
2.15.2	Create and employ Community Relations Group (CRG) GTA	A	I	I	C	R	R	R	RL	R
3	EXERCISE									
3.1.1	Conduct Exercises and Rehearsals	A	RL	I	R	R	R	R	R	R
4	INTELLIGENCE									
4.1.1	Establish an integrated Joint Intelligence Group	A	I	I	RL	R	R	R	R	R
4.1.2	Collect Intelligence data	A	I	I	RL	R	R	R	R	R
4.1.3	Collate Intelligence data	A	I	I	RL	R	R	R	R	R
4.1.4	Analyze Intelligence data	A	I	I	RL	R	R	R	R	R
4.1.5	Disseminate intelligence data	A	I	I	RL	R	R	R	R	R
4.1.6	Leverage Intelligence sources, both Domestic and International	A	I	I	RL	R	R	R	R	R
5	OPERATIONS SUPPORT									
5.1.1	Provide Operations Support	A	R	I	C	RL	R	R	R	R
5.1.2	Complete Logistics Plans	A	R	I	C	RL	R	R	R	R
5.1.3	Identify & Secure Facilities	A	R	I	C	RL	R	R	R	R
5.1.4	Develop Accreditation Process & Support completion of 2.6 activities	A	R	I	C	RL	R	R	R	R
5.1.5	Information Support	A	R	I	C	RL	R	R	R	R
5.1.6	Mobilize/Demobilize	A	R	I	C	RL	R	R	R	R
5.2.1	Provide Finance Support	A	R	I	C	RL	R	R	R	R
5.2.2	Complete Treasury Board Submissions	A	C	I	C	RL	R	R	R	R
5.2.3	Conduct Financial Reviews	A	C	I	C	RL	R	R	R	R
5.2.4	Complete Financial Budget	A	C	I	C	RL	R	R	R	R
5.3.1	Provide Human Resources Support	A	R	I	C	RL	R	R	R	R
5.3.2	Complete HR Strategy	A	R	I	C	RL	R	R	R	R
5.2.3	Fill Critical HR Positions	A	R	I	C	RL	R	R	R	R
6	COMMUNICATIONS (PACT)									
6.1.1	Coordinate Communications information from all sources	A	I	I	C	RL	R	R	R	R
6.1.2	Create Communications Products	A	I	I	C	RL	R	R	R	R
6.1.3	Approve Communications Products	A	RL	I	C	R	R	R	R	R
6.1.4	Disseminate Communications Products	A	I	I	C	RL	R	R	R	R

6.1.5	Coordinate Communications information from all sources	A	I	I	C	RL	R	R	R	R
7	EXECUTION									
7.1.1	See Command & Control (C ²) document									
8	CLOSING PROCESSES									
8.1.1	Close Project	A	RL	R	R	R	R	R	R	R
8.2.1	Close Contracts	A	RL	R	R	R	R	R	R	R

**APPENDIX J: *PUBLIC WORKS PROTECTION ACT*, R.S.O.
1990, C. P.55**

Public Works Protection Act

R.S.O. 1990, CHAPTER P.55

Definitions

1. In this Act,

"guard" means a guard appointed under this Act; ("gardien")

"highway" means a common or public highway or a part thereof, and includes any street, bridge and any other structure incidental thereto and any part thereof; ("voie publique")

"public work" includes,

- (a) any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,
- (b) any provincial and any municipal public building, and
- (c) any other building, place or work designated a public work by the Lieutenant Governor in Council. ("ouvrage public") R.S.O. 1990, c. P.55, s. 1.

Guards, appointment

2. (1) For the purpose of protecting a public work, guards may be appointed by,

- (a) the Solicitor General,
- (b) the Commissioner of the Ontario Provincial Police Force,
- (c) any inspector of the Ontario Provincial Police Force,
- (d) the head or deputy head of the municipal council or the chief of police of the municipality in which the public work is located, or the person acting in the place or stead of the head or deputy head,
- (e) the chair or other person who is the head of a board, commission or other body owning or having charge of the public work, or the person acting in the place or stead of the chair or other person.

Powers of guard

(2) Every person appointed as a guard under this section has for the purposes of this Act the powers of a peace officer.

Duties of guard

(3) Subject to the regulations and to any special direction of the Solicitor General or the Commissioner of the Ontario Provincial Police Force, every guard shall obey all directions of the person appointing him or her, any inspector of the Ontario Provincial Police Force, the chief of police of the municipality in which is located the public work that he or she is protecting, and the person who is in charge of the protecting of the public work.

Breach of duty of guard

(4) Every guard who,

- (a) neglects or refuses to obey a direction that he or she is required to obey under subsection (3);
- (b) fails in any manner to carry out his or her duties as guard,
- (c) leaves the location to which he or she is assigned as guard or ceases to act as guard without leave of any of the persons mentioned in subsection (3); or

(d) otherwise conducts himself or herself in a manner not consistent with his or her duties as guard, is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than two months, or to both. R.S.O. 1990, c. P.55, s. 2.

Powers of guard or peace officer

3. A guard or peace officer,

- (a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;
- (b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and
- (c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering. R.S.O. 1990, c. P.55, s. 3.

Statement under oath to be conclusive evidence

4. For the purposes of this Act, the statement under oath of an officer or employee of the government, board, commission, municipal or other corporation or other person owning, operating or having control of a public work, as to the boundaries of the public work is conclusive evidence thereof. R.S.O. 1990, c. P.55, s. 4.

Refusal to obey guard, etc.

5. (1) Every person who neglects or refuses to comply with a request or direction made under this Act by a guard or peace officer; and every person found upon a public work or any approach thereto without lawful authority, the proof whereof lies on him or her, is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than two months, or to both.

Arrest

(2) A guard or peace officer may arrest, without warrant, any person who neglects or refuses to comply with a request or direction of a guard or peace officer, or who is found upon or attempting to enter a public work without lawful authority. R.S.O. 1990, c. P.55, s. 5.

Regulations

6. The Lieutenant Governor in Council may make regulations,

- (a) providing for the organization, co-ordination, supervision, discipline and control of guards;
- (b) defining the areas that constitute approaches to public works, either generally or with regard to a particular public work;
- (c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1990, c. P.55, s. 6.

